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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 535

MARGUERITE LORETTA ALDRICH, PETITIONER,

vs.

WILLIAM T. ALDRICH, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

PETITION FOR CERTIORARI FILED JANUARY 10, 1963
CERTIORARI GRANTED APRIL 15, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 737

MARGUERITE LORETTA ALDRICH, PETITIONER,

vs.

WILLIAM T. ALDRICH, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

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[fol. 1]

No. 12139

IN SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

Charleston

Civil Action No. 63

MARGUERITE LORETTA ALDRICH, Plaintiff,

vs.

WILLIAM T. ALDRICH, NATALIE ALDRICH, ANGELA ALDRICH, M. S. ALDRICH & ASSOCIATES, INC., ALDRICH-SLICER COMPANY, a Corporation, and JOHN C. WHITE, Executor of the Estate of M. S. ALDRICH, Deceased, Defendants.

THE PETITION OF MARGUERITE LORETTA ALDRICH FOR AN APPEAL

To the Honorable Judges of the Supreme Court of Appeals of West Virginia:

The petitioner, Marguerite Loretta Aldrich, respectfully represents that she is aggrieved by an order and judgment of the Circuit Court of Putnam County, entered on August 2, 1961, dismissing her complaint and entering judgment for the defendants on the pleadings and the stipulation filed by the parties.

[fol. 2]

Issues

These two issues are raised in this case: First: Will the Circuit Court of Putnam County enforce a Florida decree calling for the assessment of alimony against the estate of M. S. Aldrich? Second: Will the Circuit Court of Putnam County set aside and vacate a deed for real estate executed without consideration by M. S. Aldrich to his son Edwin M. Aldrich on April 22, 1942; and a deed for the

same real estate executed by Edwin M. Aldrich, likewise without consideration, to the defendant, William T. Aldrich, dated November 15, 1946? The trial court decided both propositions in the negative.

Statement of Facts

The plaintiff and M. S. Aldrich were married in 1918. Differences arose between them following which they were divorced in Dade County, Florida, on May 31, 1945. This decree, a copy of which is in the case as "Plaintiff's Exhibit A" awarded alimony to the plaintiff in the sum of $250.00 per month so long as she lived and made the same a charge against the estate of M. S. Aldrich in the event of his death. This part of the decree reads as follows:

"4. That the defendant, Moriel Simeon Aldrich, be and he is hereby ordered and required to pay to the plaintiff, Marguerite Loretta Aldrich, the monthly sum of $250.00 as and for her permanent alimony, said sum to be paid to her monthly at the office of the Clerk of the Circuit Court at Miami, Dade County, Florida, and in the event the defendant, Moriel Simeon Aldrich, shall predecease the plaintiff, Marguerite Loretta Aldrich, said monthly sum of $250.00 shall, upon the death of said defendant, become a charge [fol. 3] upon his estate during her lifetime; and this Court retains jurisdiction in respect thereto;".

On June 5, 1945, M. S. Aldrich petitioned the Circuit Court of Dade County for a rehearing which was denied. The Court, however, reduced the alimony from $250.00 to $215.00 per month. See "Plaintiff's Exhibit B."

M. S. Aldrich died testate on May 29, 1958, while a resident of Putnam County. His last will and testament was duly probated and the estate was put in line for settlement. The plaintiff filed a claim for alimony which accrued after his death. This action was subsequently filed to adjudicate the rights of the plaintiff.

M. S. Aldrich, at the time of his death, owed no alimony to the plaintiff, he having kept his payments current. The appraisal of the estate showed assets in the amount of $7283.50, which was inadequate to meet future obligations of the Florida divorce decree.

William T. Aldrich is the son of M. S. Aldrich. Natalie Aldrich is the wife of William T. Aldrich. Angela Aldrich is the widow of M. S. Aldrich. M. S. Aldrich & Associates, Inc., is a corporation which was principally, if not solely, owned by M. S. Aldrich during his lifetime or until a short time prior to his death. Aldrich-Slicer Company is a corporation organized by William T. Aldrich. John C. White is executor of the M. S. Aldrich estate.

The plaintiff in this action charges that M. S. Aldrich prior to his death, transferred a lucrative insurance business to his son, William T. Aldrich, one of the defendants herein and to Aldrich-Slicer Company, a corporation, owned [fol. 4] by his son, and thereby rendered his estate unable to meet the alimony payments which fell due and were to accrue after his death. She also charges that he owned a farm in Putnam County title to which he had put in his son, Edwin M. Aldrich, in 1942, and which had been conveyed by Edwin to William T. Aldrich in 1946. Both deeds were executed without consideration. She prayed that these transfers and conveyances be set aside and an accounting made. An answer was filed by William T. Aldrich in which he denied the fraudulent charges.

The defendants with the exception of Angela Aldrich, who had not made an appearance in the case, filed a motion for judgment on the pleadings. In order that the legal proposition might be determined with as little expense as possible, a stipulation was entered into and filed setting out that no alimony was owed at the time of the death of M. S. Aldrich. It was also stipulated that there was no constructive or actual fraud in the conveyance of the Putnam County real estate. It was contended by the plaintiff that despite the conveyances the real estate was actually owned by M. S. Aldrich at the time of his death and she so charged in her complaint.

The court held that the Circuit Court of Dade County, Florida, could not impose a duty and obligation on the estate of M. S. Aldrich to pay alimony following his death. Judgment was entered for the defendants. It is from that judgment that this petition for an appeal is prosecuted.

Errors Assigned

1. The court erred in holding that the divorce decree and the decree following on rehearing entered by the Circuit Court of Dade County, Florida, was invalid and unenforceable in so far as they purported to charge the estate of [fol. 5] M. S. Aldrich with alimony which might accrue after his death.

2. The court erred in holding that the deeds for the real estate in Putnam County were not subject to attack by the plaintiff.

3. The court erred in entering judgment for the defendants.

We, therefore, respectfully pray the court to award an appeal to the end that the judgment of the Circuit Court of Putnam County may be reversed.

H. D. Rollins, Attorney for Marguerite Loretta Aldrich, Petitioner.

Clerk's Certificate to costs for and preparation of record (omitted in printing).

[fol. 6] Filed Aug. 18, 1961. G. L. Copen, Clerk Circuit Court, Putnam County.

Filed Aug. 22, 1961. Kenneth E. Hines, Clerk Supreme Court of Appeals of West Virginia.

State of West Virginia, to-wit:

The appeal prayed for in the foregoing petition was allowed on the 16th day of October, 1961. Bond is required in the penalty of $200.00, conditioned according to law.

Attest: Kenneth E. Hines, Clerk Supreme Court of Appeals.

[fol. 7]

RECORD

In Circuit Court of Putnam County, West Virginia

Civil Action No. 63

Marguerite Loretta Aldrich, Plaintiff,

vs.

William T. Aldrich, Natalie Aldrich, Angela Aldrich, M. S. Aldrich & Associates, Inc., Aldrich-Slicer Company, a Corporation, and John C. White, Executor of the Estate of M. S. Aldrich, Deceased, Defendants.

Complaint

To the Honorable John W. Hereford, Judge of said Court:

I

The plaintiff complains of and for cause of action says, that she and M. S. Aldrich were married in the year 1918; that three children were born to them during said marriage, one of whom is the defendant, William T. Aldrich; that differences arose between the plaintiff and the said M. S. Aldrich, which resulted in their separation; that subsequent to their separation, they were divorced by a decree of the Circuit Court of Dade County, Florida, entered on May 31, 1945, a copy of which decree is hereto attached as a part of this Bill of Complaint and designated "Plaintiff's Exhibit A".

II

The plaintiff further says that by the aforesaid decree the plaintiff was awarded alimony in the amount of $250.00 [fol. 8] per month for the duration of her life; that the said alimony was made a charge upon the estate of M. S. Aldrich should he predecease her; that thereafter the said M. S. Aldrich petitioned the aforesaid Circuit Court for a rehear-

ing of the cause and upon rehearing the alimony was reduced to $215.00 per month, but all other terms and conditions were left unchanged from the former decree. A copy of the decree of modification is attached hereto and designated "Plaintiff's Exhibit E".

III

The plaintiff further says that M. S. Aldrich died testate May 29, 1958, while a resident of Putnam County, West Virginia; that his last will and testament was duly probated in said Putnam County, and John C. White was named therein as Executor and qualified as such and said estate is now in process of administration in said County; that the said William T. Aldrich and Angela Aldrich, second wife of M. S. Aldrich, were made sole beneficiaries of his estate; that an appraisal was made of said estate and such assets as were found were appraised at $7,283.50. A copy of said appraisal is attached hereto and designated "Plaintiff's Exhibit C".

IV

The plaintiff further says that the deceased, M. S. Aldrich, for many years prior to his death owned and operated an insurance agency in the City of Charleston, West Virginia, under the name of M. S. Aldrich & Associates, Inc.; that the plaintiff is advised the said decedent was sole owner of said corporation; that he had many large insurance accounts in said corporation and had a very substantial yearly income.

[fol. 9]

V

The plaintiff further says that prior to the death of said M. S. Aldrich, he took his son, the defendant, William T. Aldrich, into his office as an employee; that said William T. Aldrich was a young man at said time and had had no experience in the insurance business or in any business; that the said M. S. Aldrich, as the plaintiff believes, paid to said William T. Aldrich a large salary, far in excess of his worth to the business; that in the month of April, 1958, a short time prior to the decedent's death, the defendant,

William T. Aldrich, and the deceased caused a corporation to be formed by the name of Aldrich-Slicer Company and had all, or practically all, the capital stock of the same issued to the defendant, William T. Aldrich; that they established the offices of this corporation in the offices of M. S. Aldrich & Associates, Inc., caused the said William T. Aldrich to be elected president of said newly formed corporation and placed him in full charge of the same; that thereafter the said William T. Aldrich fraudulently transferred and caused to be transferred the assets, business and accounts receivable of M. S. Aldrich & Associates, to said newly formed corporation without consideration; that the said new corporation, as plaintiff believes, had no assets at time the same started business and the said transfer was made to it without consideration; that the said transfer rendered the said M. S. Aldrich and his estate insolvent or so nearly so that the plaintiff is now unable to collect the alimony provided for her in the aforesaid decree of divorce; that in the course of said transactions between the decedent and the said William T. Aldrich, the decedent, as the plaintiff believes, transferred a part of his stock in M. S. Aldrich [fol. 10] & Associates, Inc., to the said William T. Aldrich, which transfer was also made without consideration.

VI

The plaintiff further says that the only assets which the appraisers of the decedent's estate were able to find totaled $7,283.50; that the said estate is now indebted to the plaintiff in excess of the amount of $4,000.00 and the net assets available are insufficient to pay this arrearage and nothing is available for future payments.

VII

The plaintiff further says that the defendant, William T. Aldrich, now has substantial property holdings in his name, including a farm in Putnam County, West Virginia, all of which came to him through his father, M. S. Aldrich, prior to his death; that said property, including the farm and the insurance business referred to herein was put in the name of said William T. Aldrich, without consideration; that the

said diversion of assets by M. S. Aldrich, to his son, the defendant, William T. Aldrich, and the subsequent manipulation of said assets, left the plaintiff without a remedy to collect the alimony decreed to her unless the said transfers are vacated and set aside and the property put back in the estate of the decedent where it rightly belongs.

The plaintiff, therefore, prays that this bill of complaint be filed; that process issue thereon against all the defendants named herein; that all the defendants be required to answer; that William T. Aldrich be required to answer; that William T. Aldrich be required to disclose the following: (1) The number of shares of stock held by M. S. Aldrich in M. S. Aldrich & Associates, Inc., in 1945, and the [fol. 11] disposition made by him of same; (2) The number of shares of stock which he, the said William T. Aldrich, has in M. S. Aldrich & Associates, Inc., the date he acquired the same, and if acquired through M. S. Aldrich, the consideration paid therefor and to whom paid; (3) The insurance accounts owned by M. S. Aldrich & Associates, Inc., at the time the corporation Aldrich-Slicer Company was formed; (4) Whether any insurance accounts were transferred from M. S. Aldrich & Associates, Inc., to Aldrich-Slicer Company and if so the names of said accounts and the consideration paid and to whom paid; (5) Whether any insurance accounts formerly held and owned by M. S. Aldrich & Associates, Inc., are now owned by Aldrich-Slicer Company, and if so how the latter company acquired the same; (6) The names of the stockholders of Aldrich-Slicer Company; (7) The amount of the assets of Aldrich-Slicer Company at the time it started business and where those assets came from; (8) The names of the insurance and bonding companies that Aldrich-Slicer Company has placed insurance with since the date of its incorporation; (10) The salary paid by M. S. Aldrich & Associates, Inc., to William T. Aldrich, since 1955; (11) A list of all property acquired by William T. Aldrich from M. S. Aldrich and M. S. Aldrich & Associates, Inc., and the consideration paid therefor; (12) A statement of how he acquired the M. S. Aldrich farm in Putnam County and the consideration paid therefor. The plaintiff further prays that the assets of M. S. Aldrich be properly determined and placed in his

estate; that all illegal transfers and all transfers without consideration made by M. S. Aldrich & Associates, Inc., and M. S. Aldrich to William T. Aldrich be set aside and vacated; that the assets properly belonging to the estate of M. S. Aldrich, deceased, when determined, be placed in a trust and held for the purpose of paying off and discharging [fol. 12] the obligation of the estate to the plaintiff; that all proper orders and decrees be entered herein; that the plaintiff be given such other and further relief as may be proper in the premises and to equity may seem meet. And as in duty bound, the plaintiff will ever pray, etc.

H. D. Rollins, Counsel for Plaintiff, 305 Davidson Building, Charleston, West Virginia.

CLERK'S NOTE

Exhibits A, B and C of this Complaint being the same as Exhibits A, B and C of the amended Complaint hereinafter printed (side folios 21-31, pages 16-24) are omitted from the printed record.

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

ORDER GRANTING LEAVE TO FILE AMENDED COMPLAINT, ETC.—Dated December 28, 1960, and Entered January 3, 1961

This action came on for hearing before the Court, Honorable John W. Hereford presiding, on the following motions:

1. Motion by the defendant Natalie Aldrich to dismiss the action because the complainant fails to state a claim against said defendant upon which relief can be granted.

2. Separate motions by the defendants William T. Aldrich, M. S. Aldrich & Associates, a corporation, and Aldrich-Slicer Company, a corporation, to require the plaintiff to give security for the payment of costs pursuant to Code, 59-2-2.

3. Separate motions of the defendants William T. Aldrich, M. S. Aldrich & Associates, a corporation, and Al- [fol. 13] drich-Slicer Company, a corporation, to direct the plaintiff to file a more definite statement.

During the course of argument by counsel, counsel for the plaintiff moved for leave to file an amended bill of complaint, which motion was not opposed by counsel for the defendants making the motions above listed, and counsel for said defendants further agreed to withdraw said motions in the light of the permission granted to the plaintiff to file an amended complaint.

Therefore, it is Ordered and Adjudged:

1. The plaintiff shall post bond with security as provided by Chapter 59, Article 2, Section 2, of the West Virginia Code, to secure payment of any costs which may be awarded to the defendants, and any fees due or to become due in this action, in the penalty of $500.00.

2. The plaintiff is granted permission to file an amended bill of complaint.

3. The defendants Natalie Aldrich, William T. Aldrich, M. S. Aldrich & Associates and Aldrich-Slicer Company are granted permission to withdraw the motions heretofore made by them and hereinabove described, and all of said motions are hereby withdrawn except the motion for security for costs.

Dated, 12-28-60.

John W. Hereford, Judge.

Submitted by: Ernest H. Gilbert, Attorney for Natalie [fol. 14] Aldrich, William T. Aldrich, M. S. Aldrich & Associates and Aldrich-Slicer Company.

Approved by: H. D. Rollins, Attorney for Plaintiff.

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

AMENDED COMPLAINT

To the Honorable James Lee Thompson, Judge of said Court:

I

The plaintiff complains of and for cause of action says, that she and M. S. Aldrich were married in the year 1918; that three children were born to them during said marriage,

one of whom is the defendant, William T. Aldrich; that differences arose between the plaintiff and the said M. S. Aldrich, which resulted in their separation; that subsequent to their separation, they were divorced by a decree of the Circuit Court of Dade County, Florida, entered on May 31, 1945, a copy of which decree is hereto attached as a part of this Bill of Complaint and designated "Plaintiff's Exhibit A."

II

The plaintiff further says that by the aforesaid decree the plaintiff was awarded alimony in the amount of $250.00 per month for the duration of her life; that the said alimony was made a charge upon the estate of M. S. Aldrich [fol. 15] should he predecease her; that thereafter the said M. S. Aldrich petitioned the aforesaid Circuit Court for a rehearing of the cause and upon rehearing the alimony was reduced to $215.00 per month, but all other terms and conditions were left unchanged from the former decree. A copy of the decree of modification is attached hereto and designated "Plaintiff's Exhibit B."

III

The plaintiff further says that M. S. Aldrich died testate May 29, 1958, while a resident of Putnam County, West Virginia; that his last will and testament was duly probated in said Putnam County, and John C. White was named therein as executor and qualified as such and said estate is now in process of administration in said County; that the said William T. Aldrich and Angela Aldrich, second wife of M. S. Aldrich, were made sole beneficiaries of his estate; that an appraisal was made of said estate and such assets as were found were appraised at $7,283.50. A copy of said appraisal is attached hereto and designated "Plaintiff's Exhibit C."

IV

The plaintiff further says that the deceased, M. S. Aldrich, for many years prior to his death owned and operated an insurance agency in the City of Charleston, West Vir-

ginia, under the name of M. S. Aldrich & Associates, Inc.; that the plaintiff is advised the said decedent was sole owner of said corporation; that he had many large insurance accounts in said corporation and had a very substantial yearly income.

[fol. 16] V

The plaintiff further says that prior to the death of said M. S. Aldrich, he took his son, the defendant, William T. Aldrich, into his office as an employee; that said William T. Aldrich was a young man at said time and had had no experience in the insurance business or in any business; that the said M. S. Aldrich, as the plaintiff believes, paid to said William T. Aldrich a large salary, far in excess of his worth to the business; that in the month of April, 1958, a short time prior to the decedent's death, the defendant, William T. Aldrich, and the deceased caused a corporation to be formed by the name of Aldrich-Slicer Company and had all, or practically all, the capital stock of the same issued to the defendant, William T. Aldrich; that they established the offices of this corporation in the offices of M. S. Aldrich & Associates, Inc., caused the said William T. Aldrich to be elected president of said newly formed corporation and placed him in full charge of the same; that thereafter the said William T. Aldrich fraudulently transferred and caused to be transferred the assets, business and accounts receivable of M. S. Aldrich & Associates, to said newly formed corporation without consideration; that the said new corporation, as plaintiff believes, had no assets at time the same started business and the said transfer of the assets of M. S. Aldrich & Associates, Inc., was made to it without consideration; that the said transfer rendered the said M. S. Aldrich and his estate insolvent or so nearly so that the plaintiff is now unable to collect the alimony provided for her in the aforesaid decree of divorce; that in the course of said transactions between the decedent and the said William T. Aldrich, the decedent, as the plaintiff believes, transferred a part of his stock in M. S. Aldrich & Associates, Inc., to the said William T. Aldrich, which transfer was also made without consideration.

[fol. 17] VI

The deceased, M. S. Aldrich, owned a parcel of land in Putnam County, West Virginia, which was conveyed to him by C. B. Hildreth. On April 22, 1942, the said M. S. Aldrich executed a deed for no consideration purporting to convey title to said land to his son, Edwin M. Aldrich. A copy of this deed is attached hereto as "Plaintiff's Exhibit D."

On November 15, 1946, Edwin M. Aldrich and wife at the request of M. S. Aldrich, executed a deed conveying title to said land to the defendant, William T. Aldrich, which conveyance was also made without consideration. A copy of this deed is attached hereto as "Plaintiff's Exhibit E."

The deed from M. S. Aldrich to Edwin M. Aldrich purports to bear the signature of the plaintiff. The plaintiff does not remember having signed said deed and is of the opinion that she did not sign the same and that her name was forged thereto. She does remember that M. S. Aldrich insisted that she sign such a deed. Edwin M. Aldrich at the time was an infant and was a cadet at West Point preparing to be a professional army officer, and the plaintiff was unable to understand why M. S. Aldrich wanted to put title to the property in his name. The plaintiff refused to execute the deed and she is now unable to say whether she signed it or not. She demands that the original deed be produced so that she may take a look at what purports to be her signature.

The deed from Edwin M. Aldrich to the defendant, William T. Aldrich, was likewise made at the direction of M. S. Aldrich. After the said deeds were made, M. S. Aldrich continued to occupy the land as his home, and [fol. 18] during the time made substantial improvements on it at his own expense; and the plaintiff says, he, M. S. Aldrich retained the ownership of the land and owned it and lived on it at the time of his death even though title was in the name of the defendant, William T. Aldrich.

Natalie Aldrich is the wife of William T. Aldrich. If the deeds above referred to should be set aside and title to the land put back in the estate of M. S. Aldrich, the inchoate dower right of Natalie Aldrich would be brought in question and she is, therefore, a necessary party to this action.

VII

The plaintiff further says that the only assets which the appraisers of the decedent's estate were able to find totaled $7,283.50; that the said estate is now indebted to the plaintiff in excess of the amount of $4,000.00 and the net assets available are insufficient to pay this arrearage and nothing is available for future payments.

VIII

The plaintiff further says that the defendant, William T. Aldrich, now has substantial property holdings in his name, including the aforesaid farm in Putnam County, West Virginia, all of which came to him through his father, M. S. Aldrich, prior to his death; that said property, including the farm and the insurance business referred to herein was put in the name of William T. Aldrich without consideration; that the said diversion of assets by M. S. Aldrich to his son, the defendant, William T. Aldrich, and the subsequent manipulation of said assets, left the plaintiff without a remedy to collect the alimony decreed [fol. 19] to her unless the said transfers are vacated and set aside and the property put back in the estate of the decedent where it rightly belongs.

The plaintiff, therefore, prays that this amended complaint be filed; that all the defendants be required to answer this amended complaint; that William T. Aldrich be required to disclose the following: (1) the number of shares of stock held by M. S. Aldrich in M. S. Aldrich & Associates, Inc., in 1945, and the disposition made by him of same; (2) the number of shares of stock which he, the said William T. Aldrich, has in M. S. Aldrich & Associates, Inc., the date he acquired the same, and if acquired through M. S. Aldrich, the consideration paid therefor and to whom paid; (3) the insurance accounts owned by M. S. Aldrich & Associates, Inc., at the time the corporation Aldrich-Slicer Company was formed; (4) whether any insurance accounts were transferred from M. S. Aldrich & Associates, Inc., to Aldrich-Slicer Company and if so the names of said accounts and the consideration paid and to whom paid; (5) whether any insurance accounts formerly held and owned

by M. S. Aldrich & Associates, Inc., are now owned by Aldrich-Slicer Company, and if so, how the latter company acquired the same; (6) the names of the stockholders of Aldrich-Slicer Company; (7) the amount of the assets of Aldrich-Slicer Company at the time it started business and where those assets came from; (8) the names of the insurance and bonding companies that Aldrich-Slicer Company has placed insurance with since the date of its incorporation; (9) the salary paid by M. S. Aldrich & Associates, Inc., to William T. Aldrich since 1955; (10) a list of all property acquired by William T. Aldrich from M. S. Aldrich and M. S. Aldrich & Associates, Inc., and the consideration paid therefor; (11) a statement of how he acquired the M. S. Aldrich farm in Putnam County and the [fol. 20] consideration paid therefor. The plaintiff further prays that the assets of M. S. Aldrich be properly determined and placed in his estate; that all illegal transfers and all transfers without consideration made by M. S. Aldrich & Associates, Inc., and M. S. Aldrich to William T. Aldrich be set aside and vacated; that the assets properly belonging to the estate of M. S. Aldrich, deceased, when determined, be placed in a trust and held for the purpose of paying off and discharging the obligation of the estate to the plaintiff; that all proper orders and decrees be entered herein; that the plaintiff be given such other and further relief as may be proper in the premises and to equity may seem meet. And as in duty bound, the plaintiff will ever pray, etc.

H. D. Rollins, Counsel for Plaintiff.

Certificate of Service (omitted in printing).

[fol. 21]

PLAINTIFF'S EXHIBIT A TO AMENDED COMPLAINT

Book 728 Page 333

FINAL DECREE DIVORCE Filed this 31 day of May, A. D. 1945 and Recorded this 1 day of June A. D. 1945 in Chancery Order Book 728 on Page 333. E. B. LEATHERMAN, Clerk Circuit Court. By: H. Gardner, Deputy.

In the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County. In Chancery No. 77727.

Marguerite Loretta Aldrich, Plaintiff,

v.

Moriel Simeon Aldrich, Defendant.

This cause came on for final hearing after due notice upon the plaintiff's bill of complaint and upon the further proceedings appearing in the record and upon all the testimony heretofore taken before the Court and the evidence submitted to the Court and upon the pleadings and proceedings herein and upon the motion of the plaintiff for the entry of a final decree, and the Court having considered all of the foregoing and the case in the entirety, it is

ORDERED, ADJUDGED AND DECREED;

1. That this suit has been properly brought and maintained and that the Court has jurisdiction of the cause and of the subject matter hereof and of the parties hereto;

2. That the equities are with the plaintiff and that she has proved the material allegations of her bill of complaint to the satisfaction of the Court;

[fol. 22] 3. That the marriage between the plaintiff, Marguerite Loretta Aldrich, and the defendant, Moriel Simeon Aldrich, be and the same is hereby dissolved and that the parties are and each of them is hereby divorced a vinculo matrimonii;

4. That the defendant, Moriel Simeon Aldrich, be and he is hereby ordered and required to pay to the plaintiff, Marguerite Loretta Aldrich, the monthly sum of $250.00

as and for her permanent alimony, said sum to be paid to her monthly at the office of the Clerk of the Circuit Court at Miami, Dade County, Florida, and in the event the defendant, Moriel Simeon Aldrich shall predecease the plaintiff, Marguerite Loretta Aldrich, said monthly sum of $250.00 shall, upon the death of said defendant, become a charge upon his estate during her lifetime; and this Court retains jurisdiction in respect thereto;

And it further appearing from the plaintiff's bill of complaint and from the evidence that the parties jointly own a home in Coral Gables, Florida, described as follows:

> Lot 1, in Block 24, of CORAL GABLES, SECTION "B", according to the plat thereof recorded in Plat Book 5, page 111, Public Records of Dade County, Florida;

as an estate by the entireties, together with the furniture, furnishings and fixtures therein contained, it is ORDERED, ADJUDGED AND DECREED:

5. That the ownership and title to the land aforesaid, together with the furniture, furnishings and fixtures therein contained be and it is hereby awarded to the plaintiff, Marguerite Loretta Aldrich, and that the defendant, Moriel [fol. 23] Simeon Aldrich be and he is hereby divested of any and all right, title or interest in or to said property, and that all right, title and interest in and to said property is hereby vested in the plaintiff, Marguerite Loretta Aldrich; and this Court retains jurisdiction to make same effective.

It further appearing to the Court that said property is now encumbered by the lien of that certain mortgage given by M. S. Aldrich and wife, Marguerite Loretta Aldrich (the plaintiff and defendant herein) to National Title Insurance Company, a Florida corporation, dated January 13, 1941, and recorded in Mortgage Book 1313, at page 327, Public Records of Dade County, Florida, in the original principal sum of $10,600.00, payable $236.00 monthly, which mortgage was thereafter assigned to Federal National Mortgage Association by assignment recorded in Assign-

ment Book 196, page 139, Public Records of Dade County, Florida, on which mortgage there is owing a balance which the defendant is obligated to pay; it is ORDERED, ADJUDGED AND DECREED:

6. That the defendant be and he is hereby ordered and required to make the payments due under said mortgage as they severally become due.

And the plaintiff having applied to this Court for a further award of suit money, attorney's fees and costs in connection with this proceeding, and the Court having considered the plaintiff's said application for suit money and temporary alimony, it is ORDERED, ADJUDGED AND DECREED:

7. That the defendant, Moriel Simeon Aldrich, be and he is hereby ordered and required to pay to the plaintiff or to her solicitor of record the sum of $4,000.00 for her ad- [fol. 24] ditional suit money and attorney's fees; and it is further ORDERED, ADJUDGED AND DECREED:

8. That this Court shall have and retain jurisdiction of this cause for the entry of such further orders touching the custody, support and education of the minor child of said parties as shall from time to time be deemed necessary.

DONE AND ORDERED this May 29, 1945.

/s/ PAUL D. BARNES
Circuit Judge.

PLAINTIFF'S EXHIBIT B TO AMENDED COMPLAINT

In the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County. In Chancery, No. 77727.

Marguerite Loretta Aldrich, Plaintiff,

v. : Order Modifying Final Decree.

Moriel Simeon Aldrich, Defendant.

This cause coming on to be heard upon defendant's petition for reduction of permanent alimony and for the modi-

fication of the final decree herein, and it appearing to the Court that a Petition for Rehearing has been heretofore filed in this cause, and argument had thereon and that the Court had announced its ruling denying the said Petition for Rehearing, but that no order had been entered thereon; and it further appearing to the Court that the actual custody of the minor child of the parties by reason of fortuitous circumstances has been changed from the plaintiff to the [fol. 25] defendant, and that the burden of the support of said child has now devolved upon the Defendant, and that the alimony awarded to the Plaintiff by the final decree included support money for said minor child; and it further appearing that the Defendant has heretofore fully complied with all the requirements of the final decree; and the Court so finding and being otherwise duly advised in the premises;

IT IS THEREUPON ORDERED, ADJUDGED AND DECREED as follows:

1. That the Defendant's Petition for Rehearing filed herein on June 5, 1945, be and the same is hereby denied;

2. That Paragraph 4 of the final decree entered herein be and the same is hereby modified in that the amount of permanent alimony awarded to Plaintiff and ordered to be paid by Defendant is hereby reduced from the sum of Two Hundred Fifty Dollars ($250.00) per month to the sum of $215.00 per month from and after the date hereof.

DONE AND ORDERED in Chambers at Miami, Florida, this 25th day of June, 1946.

PAUL D. BARNES
Circuit Judge.

A true Copy of the Original on file in the Clerk's Office. WITNESS my hand and Official Seal, This 19 day of June A. D. 1958.

E. B. LEATHERMAN,
Clerk Circuit Court Dade County, Florida

By: /s/ C. J. COURNAYES, D. C.

[fol. 26]

PLAINTIFF'S EXHIBIT C TO AMENDED COMPLAINT

NOTE:

No relative or immediate member of the family of the deceased should be named as appraiser to appraise estates. Appraisements must be impartial and based upon facts. All property including government bonds, treasury certificates and war-savings stamps must be appraised. The appraisal must be completed and filed within sixty days after death of decedent. (In recording, omit these instructions and those at the bottom of the last page.)

APPRAISEMENT

State of West Virginia,
County of Putnam, to-wit:

We, the undersigned, duly appointed appraisers, do solemnly swear that we and each of us will diligently, faithfully, and impartially seek to ascertain the true and actual value of the property, real and personal, of whatever character and wheresoever situate, including moneys, credits, investments, annuities, insurance policies, judgments and decrees for moneys, notes, industrial bonds, securities of the United States or of any State, County, District or Municipality, or of any foreign state or country, accounts receivable and all other evidences of debt whether owing to the decedent by person or corporations in or out of the state, and all tangible personalty of every character, or any interest therein, belonging to the estate of Moriel S. Aldrich, deceased, and a late resident of Scott district, Putnam County, West Virginia, and to place thereon, after careful examination, what, in our judgment, is true and actual value of each item of property so listed and examined, together with the aggregate value thereof, and [fol. 27] to submit the same as our findings as provided by law.

V. K. Knapp, Appraiser.	Address Hurricane, W. Va.
Agnes Brown, Appraiser.	Address Scott Depot, W. Va.
Louise Boyer, Appraiser.	Address Winfield, W. Va.

INVENTORY

Item No. 1. Real estate or any interest in real estate tangible or intangible in this or any other state.

	Assessed Valuation	Appraised Valuation
Lots No. 70 and 71, Laurel Terrace Add., Parkersburg, W. Va.—one-half undivided interest	150.00	300.00
Totals	$150.00	$300.00

Item No. 2. Tangible Personal Property of every kind.

1956 Mercury 4-door Sedan	1,600.00
Miscellaneous personalty (furniture, appliances, etc.)	500.00
Total	$2,100.00

Item No. 3. Government bonds and securities of every kind. (Show date of purchase, serial numbers, etc.)

3 $100 U. S. Government Series G. Bonds	300.00
Total	$300.00

[fol. 28] Item No. 4. Shares of corporate stock of every kind.

40 shares Union Apple Co.	40.00
9½ shares Glenville Gas Production Co.	-0-
107½ shares Conway Oil Company	-0-
1 share Charleston Boat Club	100.00
13 shares Budd Company	180.00
2 shares Studebaker-Packard Co.	10.50
20 shares American Fidelity & Casualty Co.	265.00
200 shares M. S. Aldrich & Associates, Inc.	200.00
45 shares Scary Consolidated, Inc.	45.00
Total	$1,040.50

Item No. 5. Money, certificates of deposit, notes, accounts receivable and all other evidences of debt. (Show dates of notes, etc.)

Note dated 31 January 1958 payable to J. B. Cummins & M. S. Aldrich in original amount of $4,500.00 at 6% (monthly payments credited to Aldrich estate account are $23.08)	2,233.00
On deposit at National Bank of Commerce, Charleston W. Va. in estate name as of 2 June 1958	130.00
Total	$2,363.00

Item No. 6. All other assets not hereinbefore mentioned including insurance payable to the estate.

Chose in action against American Fidelity & Casualty Co., Richmond, Va. in the amount of $99,000.00 of doubtful value because of deaths of parties to partially oral contract or agreement	100.00
[fol. 29] Contract to purchase Lots 9 & 10, Block 9, Unit D Harbour Heights, Punta Gorda, Florida	1,080.00
Total	$1,080.00

Item No. 7. Gifts, Annuities, Jointly held property.

NONE.

RECAPITULATION OF ALL PROPERTY, Excluding Item No. 7

Item No. 1	Real estate or any interest therein	$ 300.00
Item No. 2	Tangible personal property of every kind	2,100.00
Item No. 3	Government bonds and securities of every kind	300.00
Item No. 4	Shares of corporate stock of every kind	1,040.50
Item No. 5	Money, certificates of deposit, notes, accounts, etc.	2,363.00
Item No. 6	All other assets and hereinbefore mentioned	1,180.00
	GRAND TOTAL, Excluding Item No. 7	$7,283.50

After diligently performing our duties as appraisers under the aforesaid oath, the foregoing is respectfully submitted as our report and findings for recordation in the County Clerk's office of said County, and a true copy to be transmitted to the tax commissioner at Charleston, West Virginia.

Given under our hands this ..... day of ....., 19.....

V. K. Knapp, Appraiser.
[fol. 30] Agnes Brown, Appraiser.
Louise Boyer, Appraiser.

Date of Death of Deceased May 29, 1958. Did Decedent have a Will? Yes.

Name of Beneficiary	Relationship
William T. Aldrich	Son
Angela Aldrich	Wife

I hereby accept the foregoing as the true and lawful appraisal of all the assets of the estate of Moriel S. Aldrich, deceased.

Executor.
(Signed) ..... Administrator

Address of fiduciary 400 Union Bldg., Charleston, W. Va.

(John C. White)

I, John G. Anderson, Commissioner of Accounts of Putnam County, West Virginia, to whom the estate of M. S. Aldrich, deceased, was referred, do hereby approve the foregoing appraisement of such estate.

Given under my hand this 5th day of December 1958.

John G. Anderson
Commissioner of Accounts.

The appraisers should inquire of the executor or administrator and of members of the family whether there is any joint bank account, jointly held stocks, bonds, notes or other personal or real property held jointly by the decedent and any other person, with right of survivorship, and if the [fol. 31] decedent made any gift or conveyance without adequate money consideration and whether he purchased any annuity payable to himself or any other person, and list every item in Item No. 7, giving the names of all parties involved, and the value of such items at the death of the decedent. The foregoing items are not part of the decedent's estate but they are required by law to be appraised.

Please type name of administrator or executor under the signature.

PLAINTIFF'S EXHIBIT D TO AMENDED COMPLAINT

THIS DEED, Made this 22 day of April, 1942, by and between M. S. Aldrich and Marguerite L. Aldrich, his wife, parties of the first part and Edwin M. Aldrich, party of the second part;

WITNESSETH: That for and in consideration of the sum of Ten Dollars ($10.00), in hand paid to the said parties of the first part, the receipt of which is hereby acknowledged, and other good and valuable considerations, the said parties of the first part do GRANT, SELL and CONVEY with GENERAL WARRANTY, unto the said party of the second part, that certain tract or parcel of land, together with improvements thereon and appurtenances thereunto belonging, lying on the waters of Little Sandy Creek, in Scott District, Putnam County, West Virginia, and more particularly bounded and described as follows, to-wit:

Beginning at an iron pipe in the line of W. S. Kirtley; thence S 48-15 E 276 feet to a pipe on the northeast side of an elm tree; thence S 59-15 E 217 5/10 feet, more or less, [fol. 32] to a stake in the right of way line of State Highway 17; thence with said right of way line of said Highway N 27-E 703 feet to a stake in said right of way; thence continuing said right of way line N 30-30 E 287 feet to a

stake in right of way; thence N 59-30 W with right of way 35 feet to a stake; thence N 30-30 East with said right of way 130 feet to a point in center of Little Scary Creek; thence leaving said Highway N 25-28 W 185 feet, more or less, to a point in center of Little Scary Creek; thence S 47-30 W 780 feet with line of W. S. Kirtley to a fence post, thence S 33-05 W with line of W. S. Kirtley 397 feet to the point of beginning; containing 10 acres more or less, being the same property heretofore conveyed to M. S. Aldrich, one of the parties of the first part herein, by C. B. Hildreth and Katherine King Hildreth, his wife, by deed dated the 11th day of August, 1941, and of record in the office of the Clerk of the County Court of Kanawha County, West Virginia, in Deed Book ..... at page .....

WITNESS the following signatures and seals:

MARGUERITE L. ALDRICH (Seal)

M. S. ALDRICH (Seal)

State of West Virginia,
County of Kanawha, to-wit:

I, R. A. Keeling, a Notary Public in and for said County and State, hereby certify that M. S. Aldrich, whose name is signed to the foregoing writing, bearing date the 22 day of April, 1942, has this day acknowledged the same before me in my said County.

[fol. 33] Given under my hand this 22 day of April, 1942.

My commission expires the 25 day of June, 1945.

R. A. KEELING
Notary Public, Kanawha
County, West Virginia.

(Notarial Seal)

State of Florida
County of Dade, to-wit:

I, Warren Lehman, a Notary Public in and for said County and State, hereby certify that Marguerite L. Aldrich, whose name is signed to the foregoing writing,

bearing date the 22 day of April, 1942, has this day acknowledged the same before me in my said County.

Given under my hand and Notarial Seal this 22 day of April, 1942.

Notary Public State of Florida
at Large.

My commission expires Jan. 29th, 1945.

My commission expires the day of ....., 19.....

Warren Lehman
Notary Public.

(Notarial Seal)

[fol. 34] West Virginia, Putnam County Court Clerk's Office.

April 25, 1942. 2:10 P. M.

THIS DEED was this day presented to me in my office, and thereupon, together with the certificate thereto annexed, is admitted to record.

Teste: A. M. Brown, Clerk.

Plaintiff's Exhibit E to Amended Complaint

THIS DEED, Made this 15th day of November, 1946, by and between Edwin M. Aldrich and Marge T. Aldrich, his wife, parties of the first part, and William T. Aldrich, party of the second part;

WITNESSETH: That for and in consideration of the sum of Ten Dollars ($10.00), in hand paid to the said parties of the first part, the receipt of which is hereby acknowledged, and other good and valuable considerations, the said parties of the first part do GRANT, SELL and CONVEY with GENERAL WARRANTY, unto the said party of the second part, that certain tract or parcel of land, together with improvements thereon and appurtenances thereunto belonging lying on the waters of Little Scary Creek, in

Scott District, Putnam County, West Virginia, and more particularly bounded and described as follows, to-wit:

Beginning at an iron pipe in the line of W. S. Kirtley; thence S 48-15 E. 276 feet to a pipe on the northeast side of an elm tree; thence S 59-15 W 217 5/10 feet, more or less, to a stake in the right of way line of State Highway 17: [fol. 35] thence with said right of way line of said Highway N. 27 E 703 feet to a stake in said right of way; thence continuing said right of way line N 30-30 E 287 feet to a stake in right of way; thence N 59-30 W with right of way 35 feet to a stake; thence N 30-30 East with said right of way 130 feet to a point in center of Little Scary Creek; thence leaving said Highway N. 25-28 W 185 feet, more or less, to a point in center of Little Scary Ck.; thence S 47-30 W. 780 ft. with line of W. S. Kirtley to a fence post, thence S. 33-05 W. with line of W. S. Kirtley 397 feet to the point of beginning; containing 10 acres more or less; and being all of the property conveyed to Edwin M. Aldrich of the first part by M. S. Aldrich and wife by deed bearing date April 22, 1942, and recorded in the office of the Clerk of the County Court of Putnam County, West Virginia, in Deed Book 76, page 298; and being also the same property conveyed to M. S. Aldrich by C. B. Hildreth and wife by deed dated August 11, 1941, and duly recorded in said Clerk's Office.

WITNESS the following signatures and seals:

EDWIN M. ALDRICH (Seal)

MARGE TAYLOR ALDRICH (Seal).

State of West Virginia,
County of Kanawha, to-wit:

I, R. A. Keeling, a Notary Public in and for the County aforesaid, do certify that Edwin M. Aldrich, and Marge T. Aldrich, his wife, whose names are signed to the writing hereto annexed, bearing date the 15th day of November, [fol. 36] 1946, have this day acknowledged the same before me in my said County.

Given under my hand this 19th day of June, 1947.

My commission expires on the 22 day of June, 1955.

R. A. KEELING
Notary Public in and for Kanawha County, West Virginia.

West Virginia, Putnam County Court Clerk's Office.

July 9, 1947. 9:12 A. M.

This DEED was this day presented to me in my office, and thereupon, together with the certificate thereto annexed, is admitted to record.

Teste: A. M. BROWN, Clerk.

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

STIPULATION OF COUNSEL RE EXTENSION OF TIME FOR DEFENDANTS TO ANSWER—Filed February 23, 1961

It is hereby stipulated by and between all of the parties hereto that the time within which the defendants, and each of them, may answer or otherwise respond to the amended complaint is extended until March 10, 1961.

Dated February 22, 1961.

By H. D. Rollins, Attorney for Plaintiff.

[fol. 37] By Ernest H. Gilbert, Attorney for the Defendants, Natalie Aldrich, William T. Aldrich, M. S. Aldrich & Associates, Inc., a corporation, and Aldrich-Slicer Company, a corporation, 1101 Security Building, P. O. Box 1513, Charleston 25, West Virginia.

By Jno. C. White, Attorney for the Defendant John C. White, Executor of the Estate of M. S. Aldrich, deceased, Union Building, Charleston, West Virginia.

[File endorsement omitted]

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

Civil Action No. 63

[Title omitted]

ANSWER OF WILLIAM T. ALDRICH TO AMENDED COMPLAINT —Filed February 25, 1961

First Defense

The complaint fails to state a claim against this defendant upon which relief can be granted for the following reasons:

[fol. 38] 1. The claim of the plaintiff is predicated upon a foreign decree which is not enforceable in this action for the reasons that (1) it is contrary to West Virginia law, (2) it is not within the full faith and credit provisions of the Constitution of the United States and the Constitution of West Virginia, and (3) even if otherwise valid, it cannot operate in rem upon land in West Virginia.

2. The statements contained in paragraph three of Part VI of the complaint are too vague and uncertain to constitute a sufficient allegation of forgery or other fraud.

Second Defense

The right of action, if any, set forth in the complaint against this defendant did not accrue within five years next before the commencement of this action.

Third Defense

Plaintiff is estopped to deny the validity of the deed dated April 22, 1942, described in the first paragraph of Part VI of the amended complaint, for the reason that she executed and acknowledged said deed as one of the grantors named therein.

Fourth Defense

1. This defendant admits the allegations of Part I of the amended complaint.

2. This defendant admits the allegations of Part II of the amended complaint, but denies that the effect of the decree of the Circuit Court of Dade County, Florida, men-
[fol. 39] tioned therein, was to make any valid charge upon the West Virginia estate of M. S. Aldrich, deceased.

3. This defendant admits the allegations of Part III of the amended complaint.

4. This defendant denies the allegations of Part IV of the amended complaint.

5. This defendant admits that for a period of several years immediately before the death of M. S. Aldrich he worked for M. S. Aldrich & Associates, Inc., a corporation; but denies each and every other allegation contained in Part V of the amended complaint.

6. This defendant admits the execution and delivery of the two deeds described in the first two paragraphs of Part VI of the amended complaint, and likewise admits the allegations of the last paragraph of said Part VI; and denies each and every other allegation contained in said Part VI.

7. This defendant denies that the estate of M. S. Aldrich is indebted to the plaintiff in any amount; and admits the other allegations of Part VII of the amended complaint.

8. This defendant denies the allegations of Part VIII of the amended complaint.

Signed: Ernest H. Gilbert, Attorney for William T. Aldrich.

[fol. 40] Certificate of Service (omitted in printing).

[File endorsement omitted]

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

Civil Action No. 63

[Title omitted]

ANSWER OF NATALIE ALDRICH TO AMENDED COMPLAINT —Filed February 25, 1961

First Defense

The complaint fails to state a claim against this defendant upon which relief can be granted for the following reasons:

1. The claim of the plaintiff is predicated upon a foreign decree which is not enforceable in this action for the reasons that (1) it is contrary to West Virginia law, (2) it is not within the full faith and credit provisions of the Constitution of the United States and the Constitution of West [fol. 41] Virginia, and (3) even if otherwise valid, it cannot operate in rem upon land in West Virginia.

2. The statements contained in paragraph three of Part VI of the complaint are too vague and uncertain to constitute a sufficient allegation of forgery or other fraud.

Second Defense

The right of action, if any, set forth in the complaint against this defendant did not accrue within five years next before the commencement of this action.

Third Defense

This defendant admits, as alleged in the last paragraph of Part VI of the complaint that she is the wife of William T. Aldrich; and alleges that she is without knowledge or information sufficient to form a belief as to the truth of the other allegations of the complaint.

Signed: Ernest H. Gilbert, Attorney for Natalie Aldrich.

Certificate of Service (omitted in printing).

[fol. 42] [File endorsement omitted]

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

Civil Action No. 63

[Title omitted]

ANSWER OF M. S. ALDRICH & ASSOCIATES, INC., TO AMENDED COMPLAINT—Filed February 25, 1961

First Defense

The complaint fails to state a claim against this defendant upon which relief can be granted for the following reasons:

1. The claim of the plaintiff is predicated upon a foreign decree which is not enforceable in this action for the reasons that (1) it is contrary to West Virginia law, and (2) it is not within the full faith and credit provisions of the Constitution of West Virginia.

[fol. 43]

Second Defense

1. This defendant admits that for a period of years M. S. Aldrich was its president and chief executive officer, and as such was paid a salary; and that from about June 1, 1955, until April 1, 1958, W. T. Aldrich was its president and chief executive officer, and was paid a salary.

2. This defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Parts I, II, III, VI, VII and VIII of the amended complaint.

3. This defendant denies each and every other allegation contained in the complaint.

Signed: Ernest H. Gilbert, Attorney for M. S. Aldrich & Associates, Inc.

Certificate of Service (omitted in printing).

[fol. 44] [File endorsement omitted]

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

Civil Action No. 63

[Title omitted]

ANSWER OF ALDRICH-SLICER COMPANY TO AMENDED COMPLAINT—Filed February 25, 1961

First Defense

The complainant fails to state a claim against this defendant upon which relief can be granted for the following reasons:

1. The claim of the plaintiff is predicated upon a foreign decree which is not enforceable in this action for the reasons that (1) it is contrary to West Virginia law, and (2) it is not within the full faith and credit provisions of the Constitution of the United States and the Constitution of West Virginia.

Second Defense

1. This defendant admits that it is a corporation chartered under the laws of the State of West Virginia on April 8, 1958, and that William T. Aldrich was one of its incor- [fol. 45] porators and has been its president, chief executive officer and a principal stockholder since its incorporation.

2. This defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Parts I, II, III, IV, VI, VII and VIII of the amended complaint.

3. This defendant denies each and every other allegation contained in the complaint.

Signed: Ernest H. Gilbert, Attorney for Aldrich-Slicer Company.

Certificate of service (omitted in printing).

[File endorsement omitted]

[fol. 46]

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

Civil Action No. 63

[Title omitted]

ANSWER OF JOHN C. WHITE, EXECUTOR OF THE ESTATE OF M. S. ALDRICH, DECEASED TO AMENDED COMPLAINT—Filed March 7, 1961

To the Honorable James Lee Thompson, Judge of said Court:

I

Your defendant takes note of the fact that with one exception, namely Paragraph VI, the numbered allegations in the Amended Complaint are exactly or essentially the same as the allegations contained in the Original Complaint filed by the plaintiff herein, for which reason your defendant's Answer to that extent would necessariiy remain unchanged.

II

Your defendant for answer to the allegation contained in Paragraph VI of the Amended Complaint neither admits nor denies said allegation as he is without information as to the matters contained therein.

III

For answer to the Prayer of said Amended Complaint your defendant states, as was done with regard to the [fol. 47] Original Complaint, that the various sections of said Prayer numbered from (1) to (11) have no apparent reference to this defendant and therefore can be neither admitted nor denied.

IV

Your defendant renews by referral the same general answer to the Amended Complaint as was made in his answer to the Original Complaint.

V

Your defendant renews by referral the same Prayer of the Amended Complaint was made in his answer to the Original Complaint.

John C. White, Executor of the Estate of M. S. Aldrich, deceased.

Certificate of service (omitted in printing).

[File endorsement omitted]

[fol. 48]

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

Civil Action No. 63

[Title omitted]

NOTICE OF AND MOTION FOR JUDGMENT ON THE PLEADINGS—Filed June 16, 1961

The pleadings herein having been closed, the defendants William T. Aldrich, Natalie Aldrich, M. S. Aldrich & Associates, Inc., a corporation, and Aldrich-Slicer Company, a corporation, jointly and severally move the Court for a judgment on the pleadings in favor of said defendants upon the ground that on the undisputed facts appearing from the pleadings, said defendants, and each of them, are entitled to judgment as a matter of law.

Signed: Ernest H. Gilbert, Attorney for Defendants.

NOTICE OF MOTION

To: Herman D. Rollins
Attorney for Plaintiff
305 Davidson Building
Charleston, West Virginia

Please take notice that the undersigned will bring the above motion on for hearing before this Court on the 25th

[fol. 49] day of June, 1961, at 9:30 a. m., Eastern Standard Time, or as soon thereafter as counsel may be heard.

Signed: Ernest H. Gilbert, Attorney for Defendants.

Certificate of service (omitted in printing).

[File endorsement omitted]

In Circuit Court of Putnam County, West Virginia

Stipulation of Counsel—Filed August 1, 1961

The following is stipulated by H. D. Rollins, attorney for Margaret Loretta Aldrich; Ernest H. Gilbert, attorney for [fol. 50] William T. Aldrich, Natalie Aldrich, M. S. Aldrich & Associates, Inc., and Aldrich-Slicer Company, a corporation; and John C. White, attorney for John C. White, executor of the Estate of M. S. Aldrich, deceased.

1. M. S. Aldrich owed no alimony to Marguerite Loretta Aldrich at the time of his death on May 29, 1958, he having paid her until the first day of June of that year.

2. There was no fraud either actual or constructive in the conveyance of the parcel of land in controversy by M. S. Aldrich and Marguerite Loretta Aldrich to Edwin M. Aldrich on April 22, 1942.

It is understood that this stipulation may be filed and made a part of the record in this action.

Given under our hand this 31st day of July, 1961.

H. D. Rollins, Attorney for Marguerite Loretta Aldrich.

Ernest H. Gilbert, Attorney for William T. Aldrich, Natalie Aldrich, M. S. Aldrich & Associates, Inc., and Aldrich-Slicer Company, a Corporation.

John C. White, Attorney for John C. White, Executor of the Estate of M. S. Aldrich, Deceased.

[File endorsement omitted]

[fol. 51]

IN CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

Civil Action No. 63

MARGUERITE LORETTA ALDRICH, Plaintiff,

v.

WILLIAM T. ALDRICH, ET AL., Defendants.

JUDGMENT—August 2, 1961

This action came on to be heard on motion for judgment on the pleadings made by the defendants William T. Aldrich, Natalie Aldrich, M. S. Aldrich & Associates, Inc., and Aldrich-Slicer Company; upon stipulation of counsel for the plaintiff, counsel for the defendants William T. Aldrich, Natalie Aldrich, M. S. Aldrich & Associates, Inc., and Aldrich-Slicer Company, and the defendant John C. White, as Executor of the estate of M. S. Aldrich, deceased; and upon written notes of argument, and arguments of counsel.

Upon consideration of the foregoing the Court hereby finds:

1. The late M. S. Aldrich had paid, during his lifetime, all alimony owing to the plaintiff, Marguerite Loretta Aldrich, pursuant to the decree of the Circuit Court of Dade County, Florida, described and set forth in Exhibits A and B of the bill of complaint filed herein, from the effective dates of said decrees until May 29, 1958, the date of the death of said M. S. Aldrich.

2. The aforesaid decrees of the Circuit Court of Dade County, Florida, to the extent that they attempt to impose upon the estate of the late M. S. Aldrich the duty and obligation to pay alimony accruing after his death, are invalid and unenforceable.

[fol. 52] 3. There was no fraud, actual or constructive, in the execution and delivery by M. S. Aldrich and Marguerite Loretta Aldrich of the deed dated April 22, 1942, described and set forth in Exhibit D of the amended bill

of complaint filed herein, conveying certain land in Putnam County, West Virginia, to Edwin M. Aldrich.

Wherefore, it appearing to the Court that the defendants Natalie Aldrich, William T. Aldrich, M. S. Aldrich & Associates, Inc., a corporation, Aldrich-Slicer Company, a corporation, and John C. White, as Executor of the estate of M. S. Aldrich, deceased, are entitled to judgment in their favor, and in favor of each of them, on the undisputed facts appearing in the pleadings and in the stipulation of counsel filed herein, it is Ordered and Adjudged that the complaint be and it is hereby dismissed, with prejudice, and that the defendants recover of the plaintiffs their respective costs of action. To which counsel for the plaintiff objects and excepts.

Dated: August 2, 1961.

James Lee Thompson, Judge.

Submitted By:

Ernest H. Gilbert, Attorney for the Defendants, William T. Aldrich, Natalie Aldrich, M. S. Aldrich & Associates, Inc., and Aldrich-Slicer Company.

Inspected By:

H. D. Rollins, Attorney for Plaintiff.

[fol. 53]
Approved By:

John C. White, Attorney for the Defendant John C. White, as Executor of the estate of M. S. Aldrich, deceased.

[Filed endorsement omitted]

JUDGE'S CERTIFICATE

State of West Virginia,
County of Putnam, to-wit:

And the Court hereby certifies that the foregoing transcript contains all of the evidence introduced by stipulation of counsel and the proceedings had on the trial of this cause, as designated by counsel.

Teste: This 1st day of November, 1961.

James Lee Thompson, Judge of the Circuit Court of Putnam County, West Virginia.

Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 55]

IN SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

No. 12139

MARGUERITE LORETTA ALDRICH, Plaintiff Below, Appellant,

vs.

WILLIAM T. ALDRICH, ET AL., Defendants Below, Appellees.

MINUTE ENTRY RE ORDER ALLOWING APPEAL—
October 16, 1961

On a former day, to-wit, August 22, 1961, came the petitioner, Marguerite Loretta Aldrich, by H. D. Rollins, her attorney, and presented to the Court her petition praying for an appeal from a judgment of the Circuit Court of Putnam County rendered in this action on the 2nd day of August, 1961, with the record therein accompanying the petition, and note of argument in support thereof, which being seen and inspected by the Court the appeal prayed for is granted, but it is not to take effect until the petitioner, or some person for her, shall have given before the Clerk of the Circuit Court of Putnam County bond with good personal security in the penalty of Two Hundred Dollars, conditioned according to law.

[fol. 56]

IN SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA

[Title omitted]

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
April 24, 1962

Upon an appeal from a judgment of the Circuit Court of Putnam County, rendered on the 2nd day of August, 1961.

This day came the appellant, Marguerite Loretta Aldrich, by H. D. Rollins, her attorney, and the appellees, William T. Aldrich, Natalie Aldrich, M. S. Aldrich & Associates, Inc., and Aldrich-Slicer Company, by Ernest H. Gilbert, their attorneys, and this action was fully heard upon the transcript of the record herein and the argument and briefs of counsel thereon, and is submitted for decision.

[fol. 57]

IN SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA

12139

MARGUERITE LORETTA ALDRICH, Plaintiff Below, Appellant,

vs.

WILLIAM T. ALDRICH, ET AL., Defendants Below, Appellees.

JUDGMENT—July 6, 1962

Upon an appeal from a judgment of the Circuit Court of Putnam County, rendered on the 2nd day of August, 1961.

The Court, having maturely considered the transcript of the record herein and the argument and briefs of counsel thereon, is of opinion for reasons stated in writing and filed with the record that there is no error in the judgment complained of. It is therefore considered and ordered by

the Court that the judgment of the Circuit Court of Putnam County rendered in this action on the 2nd day of August, 1961, be, and the same is hereby affirmed, and that the appellees do recover of and from the appellant their costs about their defense in this Court in this behalf expended, and Thirty Dollars damages: all of which is ordered to be certified to the Circuit Court of Putnam County.

The syllabus of points adjudicated, prefixed to the written opinion prepared by Judge Haymond, was concurred in by Judges Browning and Berry. Judge Calhoun dissents and files a dissenting opinion. Judge Given did not participate in the decision of this case.

[fol. 58] [File endorsement omitted]

Judge Given did not participate in the decision of this case.

Judge Calhoun dissents and files a dissenting opinion.

IN SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA

No. 12139

MARGUERITE LORETTA ALDRICH,

v.

WILLIAM T. ALDRICH, ET AL.

Putnam County Affirmed

OPINION—July 6, 1962

Haymond, Judge

1. A valid judgment of a court of another state is entitled to full faith and credit in the courts of this state.

2. By virtue of the full faith and credit clause, Article IV, Section 1, of the Constitution of the United States, a

judgment of a court of another state has the same force and effect in this state as it has in the state in which it was pronounced.

3. To maintain an action in one state on a foreign judgment or decree, it is necessary that the judgment or decree be a valid personal and final adjudication which is in full force and virtue in the jurisdiction where it was rendered [fol. 59] and be capable of enforcement there by final process and the adjudication must have been rendered by a court which had jurisdiction of the parties and of the subject matter.

4. In an action on a judgment of another state the validity of the judgment is determined by the law of the jurisdiction in which the judgment was recovered.

5. A judgment rendered by a court of another state or by a court of this state is subject to attack for lack of jurisdiction to render such judgment or for fraud in its procurement.

6. When a judgment or decree of a court of another state is sought to be enforced in a court of this state, the court in this state may inquire into the jurisdiction of the court which rendered the judgment or decree, and if it appears that such court had no jurisdiction, the judgment or decree is void; but if it had jurisdiction, the judgment or decree is binding in this state.

7. A void judgment, being a nullity, may be attacked collaterally, or directly, at any time and in any court whenever any claim or right is asserted under such judgment.

8. The jurisdiction to entertain suits for divorce exists only by virtue of statute which confers such jurisdiction.

[fol. 60] 9. The Florida statute authorizing an award of permanent alimony in a decree of divorce does not authorize or empower a court of that state to award alimony to continue beyond the life of the husband.

10. In the divorce proceeding between the plaintiff and her husband, the Circuit Court of Dade County, Florida, had jurisdiction of the parties and of the subject matter of the

controversy and had the power to render a judgment dissolving the marriage between the parties; but, in the absence of any agreement between the parties, that court did not have jurisdiction to award alimony to extend beyond the death of the husband and to make such alimony a charge against his estate. For that reason the judgment awarding such alimony was void and of no force and effect under the law of the State of Florida and will not be given full faith and credit in the courts of this state.

[fol. 61] HAYMOND, Judge:

In this civil action instituted in the Circuit Court of Putnam County, in which the defendants are William T. Aldrich, son of M. S. Aldrich, deceased, Natalie Aldrich, wife of William T. Aldrich, M. S. Aldrich & Associates, Inc., Aldrich-Slicer Company, a corporation, assets in which corporations were formerly owned by M. S. Aldrich, and John C. White, Executor of the will of M. S. Aldrich, deceased, the plaintiff, Marguerite Loretta Aldrich, divorced wife of M. S. Aldrich, deceased, seeks to enforce the collection, against the estate of M. S. Aldrich, deceased, and certain property now owned by William T. Aldrich, and certain assets formerly owned by M. S. Aldrich and now held by William T. Aldrich, or M. S. Aldrich & Associates, Inc., or Aldrich-Slicer Company, of a certain decree for alimony at the rate of $215.00 per month awarded the plaintiff in a certain divorce suit formerly pending in the Circuit Court of Dade County, Florida. By final order entered August 2, 1961, the Circuit Court of Putnam County, upon the undisputed facts appearing in the pleadings, which consisted of the amended complaint of the plaintiff and its exhibits and the separate answers of each of the defendants, and in the stipulation of counsel, found that the defendants were entitled to judgment in their favor and rendered judgment of dismissal of the plaintiff's amended complaint, with prejudice, and awarded costs in [fol. 62] favor of the defendants. From that judgment this Court granted this appeal upon the petition of the plaintiff.

In a suit for divorce instituted by the plaintiff Marguerite Loretta Aldrich against her husband M. S. Aldrich

in the Circuit Court of Dade County, Florida, by final decree entered June 1, 1945, that court granted the plaintiff Marguerite Loretta Aldrich an absolute divorce from her husband M. S. Aldrich. The divorce decree contained, among other provisions which are not here material, this provision concerning alimony for the wife: "That the defendant, Moriel Simeon Aldrich, be and he is hereby ordered and required to pay to the plaintiff, Marguerite Loretta Aldrich, the monthly sum of $250.00 as and for her permanent alimony, said sum to be paid to her monthly at the office of the Clerk of the Circuit Court at Miami, Dade County, Florida, and in the event the defendant, Moriel Simeon Aldrich shall predecease the plaintiff, Marguerite Loretta Aldrich, said monthly sum of $250.00 shall, upon the death of said defendant, become a charge upon his estate during her lifetime; and this Court retains jurisdiction in respect thereto; * * *." By a subsequent decree in the same suit entered June 25, 1946, the amount of the alimony was reduced from the sum of $250.00 per month to the sum of $215.00 per month from and after that date. M. S. Aldrich paid the monthly award of $215.00 in full until his death, which occurred May 29, 1958. M. S. [fol. 63] Aldrich, who was survived by his second wife, Angela Aldrich, died testate while a resident of Putnam County, and under his last will and testament, which was duly probated, his son, the defendant William T. Aldrich, and his second wife, Angela Aldrich, are the sole beneficiaries of his estate.

The defendant John C. White was named and has qualified as executor of the estate, which is now in process of administration, and the assets of the estate according to the appraisement filed with the amended complaint, consisting of personal property and a small undivided interest in real estate, amount to a total of $7,283.50, which is less than the amount of the unpaid alimony which has accrued under the divorce decree from the death of M. S. Aldrich to the date of the institution of this action.

M. S. Aldrich owned a parcel of land containing about ten acres in Putnam County which was conveyed to him by C. B. Hildreth. On April 22, 1942, he made a deed for

that land to his son Edwin M. Aldrich, who at that time was under the age of twenty one years and a cadet at West Point. The plaintiff, as the wife of M. S. Aldrich, joined in and signed and acknowledged that deed. On November 15, 1946, Edwin M. Aldrich and Marge Taylor Aldrich, his wife, conveyed the same property to William [fol. 64] T. Aldrich, another son of M. S. Aldrich and one of the defendants in this case. Notwithstanding these conveyances M. S. Aldrich continued to occupy this land as his home until his death. M. S. Aldrich, who owned assets in M. S. Aldrich & Associates, Inc. and Aldrich-Slicer Company, also transferred his interest and control in these corporations to his son William T. Aldrich.

The plaintiff charges that the conveyance by M. S. Aldrich, in which she joined as his wife, to Edwin M. Aldrich, of the residence property of M. S. Aldrich was without consideration and that the transfer of assets in the two corporations which M. S. Aldrich formerly owned and controlled was also without consideration, and that the land and those assets, as well as the assets of the estate of M. S. Aldrich, are subject to the judgment of the Circuit Court of Dade County, Florida, for alimony which has accrued and which has been unpaid since the death of M. S. Aldrich.

The plaintiff contends that the judgment of the Circuit Court of Dade County, Florida, which awards the plaintiff alimony at the rate of $215.00 per month during her lifetime and which makes alimony which accrues after the death of M. S. Aldrich a charge upon his estate, is a valid judgment of another state and as such is entitled to full faith and credit in this state and is enforceable against [fol. 65] the assets of the estate of M. S. Aldrich and the real estate and other assets formerly owned by him which have been transferred to and are now held by his son, the defendant William T. Aldrich.

On the contrary the defendants contend, in substance, that the Circuit Court of Dade County, Florida, was without jurisdiction to award alimony against the defendant M. S. Aldrich which would be valid and enforceable against his estate after his death; that the decree of the Florida

court is not enforceable in this action for the reason that it is contrary to the laws of this state and is not within the full faith and credit provisions of the Constitution of the United States and that, even if it should be held to be a valid judgment, it is not enforceable against the property and assets formerly held by M. S. Aldrich and now held by the defendant William T. Aldrich or M. S. Aldrich & Associates, Inc., or Aldrich-Slicer Company, for the reason that the claim of the plaintiff against such property and assets is barred by limitations.

The controlling question for decision is whether the judgment of the Circuit Court of Dade County, Florida, to the extent that it awards alimony to accrue after the death of M. S. Aldrich and makes the alimony so accruing a charge upon his estate, is a valid judgment which is entitled to full faith and credit in the courts of this state; for if such judgment is not entitled to such full faith and [fol. 66] credit the question of its enforcibility against the property and assets formerly owned by M. S. Aldrich becomes unimportant and need not be considered or discussed.

This Court has held in many cases that under Article IV, Section 1, of the Constitution of the United States, a valid judgment of a court of another state is entitled to full faith and credit in the courts of this state. *Gavenda Brothers, Inc.* v. *Elkins Limestone Company, Inc.*, 145 W. Va. 732, 116 S. E. 2d 910; *Gardner* v. *Gardner*, 144 W. Va. 630, 110 S. E. 2d 495; *Consumers Credit Company of Waynesburg* v. *Bowers*, 143 W. Va. 748, 104 S. E. 2d 869; *Bennett* v. *Bennett*, 137 W.Va. 179, 70 S.E. 2d 894; *Paull* v. *Cook*, 135 W. Va. 833, 65 S. E. 2d 750; *Pukas* v. *Pukas*, 129 W.Va. 765, 42 S. E. 2d 11; *Perkins* v. *Hall*, 123 W. Va. 707, 17 S. E. 2d 795; *International Harvester Company of America* v. *Solazo*, 116 W. Va. 34, 178 S. E. 429; *Campbell* v. *Switzer*, 74 W. Va. 509, 82 S. E. 319; *Roller* v. *Murray*, 71 W. Va. 161, 76 S. E. 172, L.R.A. 1915F, 984, 32 Ann. Cas. 1914B, 1139; *Crumlish's Administrator* v. *Central Improvement Company*, 38 W. Va. 390, 18 S. E. 456, 23 L.R.A. 120, 45 Am. St. Rep. 872; *Stewart* v. *Stewart*, 27 W. Va. 167; *Gilchrist* v. *West Virginia Oil and Oil Land Com-*

pany, 21 W. Va. 115, 45 Am. Rep. 555; *Coleman* v. *Waters*, 13 W. Va. 278. It is also well established that by virtue of the full faith and credit clause, Article IV, Section 1, of the Constitution of the United States a judgment of a court of another state has the same force and effect in this state as it has in the state in which it was pronounced. 2 Black on Judgments, second edition, 1902, Chapter 22, [fol. 67] Section 861; 30A Am. Jur., Judgments, Section 237; *Campbell* v. *Switzer*, 74 W. Va. 509, 82 S. E. 319; *Roller* v. *Murray*, 71 W. Va. 161, 76 S. E. 172, L.R.A. 1915F, 984, 32 Ann. Cas. 1914B, 1139; *Wells-Stone Mercantile Company* v. *Truax*, 44 W. Va. 531, 29 S. E. 1006; *Crumlish's Administrator* v. *Central Improvement Company*, 38 W. Va. 390, 18 S. E. 456, 23 L.R.A. 120, 45 Am. St. Rep. 872; *Stewart* v. *Stewart*, 27 W. Va. 167; *Gilchrist* v. *West Virginia Oil and Oil Land Company*, 21 W. Va. 115, 45 Am. Rep. 555; *Bla* v. *Smith*, 13 W. Va. 780; *Thompson* v. *Thompson*, 226 U. S. 551, 33 S. Ct. 129, 57 L. Ed. 347; *Barber* v. *Barber*, 62 U. S. (21 How.) 582, 16 L. Ed. 226; *Babcock* v. *Babcock*, 147 Misc. 900, 265 N.Y.S. 470; *Picker* v. *Vollenhover*, 206 Or. 45, 290 P. 2d 789; *Van Natta* v. *Van Natta*, Court of Civil Appeals of Texas, 200 S. W. 907.

In 2 Black on Judgments, second edition, 1902, Chapter 22, Section 861, discussing the effect to be given to a judgment of another state, the author quotes this language from *Wood* v. *Watkinson*, 17 Conn. 500, 44 Am. Dec. 562: "* * * it is well settled, that no greater effect is to be given to it than it would have in the state where it was rendered. It has no higher dignity in any other state than in the one where it was pronounced; and hence, if in the courts of the state where the judgment was rendered, it is inconclusive, or if it is inquirable into there, during a particular period, or on certain conditions, it will be open to investigation, to the same extent, every where else. * * *. [fol. 68] It results conclusively from this principle, or is rather involved in it, that if a judgment in a state where it is recovered, has not the effect of binding personally the defendants, or any of them, in the suit in which it was rendered, no greater effect will be given to it in any other state where it is endeavoured to be enforced. It derives

its obligation only from the laws of the state in which it is pronounced." To maintain an action in one state on a foreign judgment or decree, it is necessary that the judgment or decree be a valid personal and final adjudication which is in full force and virtue in the jurisdiction where it was rendered and be capable of enforcement there by final process and the adjudication must have been rendered by a court which had jurisdiction of the parties and of the subject matter. 50 C.J.S., Judgments, Section 868. In an action on a judgment of another state the validity of the judgment is determined by the law of the jurisdiction in which the judgment was recovered. 50 C.J.S., Judgments, Section 869. A judgment rendered by a court of another state or by a court of this state is subject to attack for lack of jurisdiction to render such judgment or for fraud in its procurement. *Gavenda Brothers, Inc.* v. *Elkins Limestone Company, Inc.*, 145 W. Va. 732, 116 S. E. 2d 910; *Gardner* v. *Gardner*, 144 W. Va. 630, 110 S. E. 2d 495; *Bennett* v. *Bennett*, 137 W. Va. 179, 70 S. E. 2d 894; *Stephenson* v. *Ashburn*, 137 W. Va. 141, 70 S. E. 2d 585; *Cable* v. *Cable*, 132 W. Va. 620, 53 S. E. 2d 637; *Perkins* v. *Hall*, 123 W. Va. 707, 17 S. E. 2d 795; *Caswell* v. *Caswell*, 84 W. Va. 575, 100 S. E. 482; *Turner* v. *Stewart*, 51 W. Va. [fol. 69] 493, 41 S. E. 924; *Gilchrist* v. *West Virginia Oil and Oil Land Company*, 21 W. Va. 115, 45 Am. Rep. 555.

When a judgment or decree of a court of another state is sought to be enforced in a court in this state, the court in this state may inquire into the jurisdiction of the court which rendered the judgment or decree, and if it appears that such court had no jurisdiction, the judgment or decree is void; but if it had jurisdiction, the judgment or decree is binding in this state. Point 3, syllabus, *Stewart* v. *Stewart*, 27 W. Va. 167; *Perkins* v. *Hall*, 123 W. Va. 707, 17 S. E. 2d 795; *Citizens National Bank* v. *Consolidated Glass Company*, 83 W. Va. 1, 97 S. E. 689; *Stewart* v. *Northern Assurance Company*, 45 W. Va. 734, 32 S. E. 218, 44 L.R.A. 101; *Gilchrist* v. *West Virginia Oil and Oil Land Company*, 21 W. Va. 115, 45 Am. Rep. 555; *Milliken* v. *Meyer, Administratrix*, 311 U. S. 457, 61 S. Ct. 339, 85 L. Ed. 278, 132 A.L.R. 1357, rehearing denied, 312 U. S.

712, 61 S. Ct. 548, 85 L. Ed. 1143; *Fauntleroy* v. *Lum*, 210 U.S. 230, 28 S. Ct. 641, 52 L. Ed. 1039; *Simmons* v. *Saul*, 138 U. S. 439, 11 S. Ct. 369, 34 L. Ed. 1054; *Thompson* v. *Whitman*, 85 U. S. (18 Wall.) 457, 21 L. Ed. 897; *Kelley* v. *Kelley*, 161 Mass. 111, 36 N. E. 837; 30A, Am. Jur., Judgments, Section 261.

This Court has held in many cases that a void judgment, being a nullity, may be attacked collaterally, or directly, at any time and in any court whenever any claim [fol. 70] or right is asserted under such judgment. *Gavenda Brothers, Inc.* v. *Elkins Limestone Company, Inc.*, 145 W. Va. 732, 116 S. E. 2d 910; *State ex rel. Cecil* v. *Knapp*, 143 W. Va. 896, 105 S. E. 2d 569; *State ex rel. Leeber and Covey* v. *The Board of Education of The County of Raleigh*, 143 W. Va. 584, 103 S. E. 2d 797; *State ex rel. Browning* v. *Tucker*, 142 W. Va. 830, 98 S. E. 2d 740; *State ex rel. Vance* v. *Arthur*, 142 W. Va. 737, 98 S. E. 2d 418; *State ex rel. Lovejoy* v. *Skeen*, 138 W. Va. 901, 78 S. E. 2d 456, certiorari denied, 349 U. S. 940, 75 S. Ct. 786, 99 L. Ed. 1268; *Bennett* v. *Bennett*, 137 W. Va. 179, 70 S. E. 2d 894; *Stephenson* v. *Ashburn*, 137 W. Va. 141, 70 S. E. 2d 585, and many other cases cited in the opinion in the *Gavenda Brothers* case.

In the light of the foregoing well established legal principles in considering whether the judgment, entered by the Circuit Court of Dade County, Florida, awarding alimony to extend beyond the death of M. S. Aldrich and making such alimony a charge against his estate, may be enforced in this state, it is necessary to determine whether those provisions of the judgment are valid under the law of the State of Florida.

In support of her contention that such decree is valid under the law of the State of Florida, the plaintiff cites and relies upon *Johnson* v. *Every*, Fla. 1957, 93 So. 2d 390. In that case the Circuit Court of Dade County, Florida, entered a decree of divorce in favor of the wife [fol. 71] Beulah V. Johnson against her husband James Nelson Johnson. The decree awarded the wife the sum of twenty five dollars per week for her support and maintenance and provided that the payment of that amount

should cease upon the death of the plaintiff or upon her remarriage to any person other than the defendant. Prior to the divorce proceedings the parties had entered into a property settlement by which the husband agreed that the payments should only be terminated by the death of the wife or her remarriage to a person other than the husband. After the death of the husband the wife sought, in a proceeding against the administrator of the estate of the deceased former husband, to compel the payment of alimony in accordance with the decree of divorce. The Supreme Court of Florida in a four to three decision held that where under property settlement agreement and divorce decree it was provided that weekly payments to the wife were to be terminated only by the death of the wife or her remarriage to a person other than her husband, the husband's liability for such payments did not terminate at his death and that his estate was liable for such payments during the life of his former wife. The majority opinion in that case contains these paragraphs:

"We subscribe to the proposition that in the absence of an express contract or a provision in a decree such as the one before us, a divorced husband's liability for alimony [fol. 72] terminates with his death. On the other hand, where the decree or property settlement agreement expressly provides for the continuance of the payments 'until the death of the wife' then the husband's estate remains liable for the obligation in the same manner as it is liable for any other legitimate obligation outstanding at the time of his death. Here there was a provision in the final decree as well as in the property settlement arrangement to the effect that the payments would be made during the life of the wife or until she remarried. She is still living and she has not remarried, and consequently, the conditions for the termination of the weekly payments have not occurred.

"This was in effect a part of our holding in *Underwood* v. *Underwood*, Fla. 1953, 64 So. 2d 281; and *Allen* v. *Allen*, 111 Fla. 733, 150 So. 237, 238. In the case last cited, we held: '* * * As a general rule the obligation to pay alimony dies with the person, but agreements of the hus-

band to bind his representatives to do this have been upheld, and there is no prohibition against them in this state.'

"The rule stated appears to be applicable to the situation in the case at bar."

It is clear from the majority opinion in the *Johnson* case, and particularly from the above quoted paragraphs, that the holding that the estate of the husband was liable for alimony accruing after his death and during the life of his former wife was based and depended entirely upon [fol. 73] the agreement by which the husband incurred that obligation, and that in the absence of such agreement an award of alimony would not continue after but would terminate at the death of the husband. It is true that the court said " * * * in the absence of an express contract *or* a provision *in a decree such as the one before us*, a divorced husband's liability for alimony terminates with his death." (Italics supplied). Though this language is disjunctive in form, it is evident that the reference to the decree "such as the one before" the court meant a decree based upon a contract. Such meaning is also indicated by the quotation from *Allen* v. *Allen*, 111 Fla. 733, 150 So. 237, that "As a general rule the obligation to pay alimony dies with the person, but agreements of the husband to bind his representatives to do this have been upheld, and there is no prohibition against them in this state."; and by the statement that the rule stated in the immediately preceding quotation "appears to be applicable to the situation in the case at bar."

That the validity of the award of alimony to continue beyond the death of the husband in the *Johnson* case was based upon and resulted solely from the agreement is also indicated by the dissenting opinion of three of the justices who would have held the award invalid because it did not appear to them from the agreement between the parties that the parties intended the payments to extend beyond the death of the husband and to be binding upon his estate. [fol. 74] The dissenting opinion contains, among others, these paragraphs:

"In the instant case, the agreement does not clearly disclose that the wife released a valuable property right nor that she had any special equity in her husband's business or property. Construing the language used in the agreement and the decree in accordance with its usual meaning, it appears that the weekly payments were intended as 'alimony' in its strictest sense, meaning 'nourishment' or 'sustenance,' arising out of the husband's common-law obligation to support his wife and child. Cf. *Jacobs* v. *Jacobs*, Fla. 1951, 50 So. 2d 169. This being so, we will not infer that the parties and the court intended the payments to extend beyond the death of the husband and to be binding upon his estate, as against the general rule that such payments cease upon his death."; and

"We do not decide, since the question is not presented, whether an award of this type of 'pure' alimony could be made by the court to extend beyond the lifetime of the husband, in the absence of an agreement of the parties to that effect. There is no statute in this state so providing; and it has been said that 'generally such power is considered as not existent, in the absence of any statute or agreement between the parties.' See the statement of the annotator in 39 A.L.R. 2d at page 1409, and cases cited."

The conclusion of this Court that the validity of the award of alimony as determined in the *Johnson* case was due to [fol. 75] and was based solely upon the contract between the parties is also supported by the pronouncements of courts which have considered the effect of the decision in that case. In *Gessler* v. *Gessler*, 273 F. 2d 302, in giving effect to a separation agreement between the husband and the wife which by its express terms was binding upon the parties and their heirs, executors and administrators, and by which the husband provided for the support of his minor children and that payment for such support be made to their mother, and which contract was held to be valid and enforceable against the estate of the deceased husband, the United States Court of Appeals, Fifth Circuit, used this language: "The facts here are analogous to the facts in *Johnson* v. *Every*, Fla. 1957, 93 So. 2d 390. In that case there was a divorce and a property settlement agreement requiring the husband to make weekly payments to the wife

to be terminated only by her death or remarriage. The court held that the husband's estate was liable for the payments in accordance with the separation agreement." A similar view of that case was expressed by the District Court of Appeal of Florida, Third District, in *Deigaard* v. *Deigaard*, Fla. 1959, 114 So. 2d 516, a divorce suit in which a decree of the trial chancellor provided that if the defendant husband should die prior to the remarriage or the death of the wife, the wife should have a claim against the estate of the husband in the amount of $5,000.00 in lieu of post-demise alimony. In reversing and holding invalid that provision of the decree the District Court of Appeal [fol. 76] said: "In addition, a divorced husband's liability for alimony generally terminates with his death. There was no expressed contract or agreement between the parties that alimony should continue beyond the life of the husband, and in the absence of statutory authority, we conclude that the decree in this respect is without legal basis. See *Allen* v. *Allen*, 111 Fla. 733, 150 So. 237; *Underwood* v. *Underwood*, Fla., 1953, 64 So. 2d 281; *Johnson* v. *Every*, Fla., 1957, 93 So. 2d 390."

In *Underwood* v. *Underwood*, Fla., 1953, 64 So. 2d 281, and *Allen* v. *Allen*, 111 Fla. 733, 150 So. 237, cited by the court in the *Johnson* case, an award to the wife to continue after the death of the husband as a liability of his estate was upheld by the court upon the basis of a property settlement agreement between the husband and the wife; and those cases indicate clearly that in the absence of an agreement an award of alimony would not be valid after the death of the husband. In the *Underwood* case the opinion contains this language: "At the very outset we dispose of the legal effect of the use of the word 'alimony' in the agreement and decree. It is not what it is *called* but what it *is* that fixes its legal status. It is the *substance* and not the *form* which is controlling. In the case of *International Trust Co.* v. *Lichhardt*, 111 Colo. 208, 139 P. 264, 147 A.L.R. 700, the court held that the use of the word *alimony* was not conclusive and that it was substance and not form which [fol. 77] guided the court. So far as agreements of the kind under consideration is concerned, where periodic payments are to be made the wife for the period of her life and is not

limited to the joint lives of the parties, the legal effect of such payments are that they constitute property settlements and not alimony. By its very nature, alimony is limited to the lifetime of the husband. See *Spear* v. *Spear*, 158 Md. 672, 149 A. 468, from which we quote with approval in *Vance* v. *Vance*, *supra*; *Emerson* v. *Emerson*, 120 Md. 584, 87 A. 1033; *Newbold* v. *Newbold*, 133 Md. 170, 104 A. 366; *Dickey* v. *Dickey*, 154 Md. 675, 141 A. 387, 58 A.L.R. 634; *North* v. *North*, 339 Mo. 1226, 100 S. W. 2d 582, 109 A.L.R. 1061." And in its opinion in the *Allen* case the court said: "For all the record shows, the agreement brought in question was of the latter class, and, if so, it may be enforced. As a general rule the obligation to pay alimony dies with the person, but agreements of the husband to bind his representatives to do this have been upheld, and there is no prohibition against them in this state. 19 C. J. §279, §635, page 279; *Storey* v. *Storey*, 125 Ill. 608, 18 N. E. 329, 1 L.R.A. 320, 8 Am. St. Rep. 417; *Miller* v. *Miller*, 64 Me. 484; *Barnes* v. *Klug*, 129 App. Div. 192, 113 N.Y.S. 325; *Fleming* v. *Peterson*, 167 Ill. 465, 47 N. E. 755; *Wilson* v. *Hinman*, 182 N. Y. 408, 75 N. E. 236, 2 L.R.A. (N.S.) 232, 108 Am. St. Rep. 820."

This Court has recognized an agreement by the husband to pay alimony during the life of the wife and has held [fol. 78] that such payments extend beyond the death of the husband and are enforceable against his estate. *Jennings* v. *First National Bank of Williamson*, 116 W. Va. 409, 180 S. E. 772.

The principle is widely recognized by the decisions of many courts that the jurisdiction to entertain suits for divorce exists only by virtue of statute which confers such jurisdiction. In 27A, C.J.S., Divorce, Section 69, the text contains this language: "In general the power to grant a divorce is a statutory, and not a common-law, power, or, stated more broadly, jurisdiction of courts in divorce actions or proceedings is dependent on statute. A court has only such jurisdiction in divorce matters as the legislature has conferred or delegated by statute, and a power exercised by the court in such proceedings must be in the statute or it does not exist." In *McGowin* v. *McGowin*, 122 Fla. 394, 165 So. 274, the opinion contains these statements and

citations: "The power to grant a divorce is a statutory and not a common-law power. 19 C. J. 23; *Martin* v. *Martin*, 173 Ala. 106, 55 So. 632; *Herron* v. *Passailaique*, 92 Fla. 818, 110 So. 539, 542." See also *State ex rel. Cecil* v. *Knapp*, 143 W. Va. 896, 105 S. E. 2d 569.

The only provision of the statutes of Florida for the award of permanent alimony in a decree of divorce is Section 65.08, Fla. Stat. F.S.A., and is expressed in this language: "In any award of permanent alimony the court shall [fol. 79] have jurisdiction to order periodic payments or payment in a lump sum." That statute does not authorize or empower a court of that state to award alimony to continue beyond the life of a husband. *Deigaard* v. *Deigaard*, Fla. 1959, 114 So. 2d 516.

In Sections 2 and 3 of the Annotation in 39 A.L.R. 2d 1406, at pages 1408 and 1409, are these statements: "While there is little authority on the precise point, several cases indicate that, in the absence of any statute or agreement between the parties, the court has no power to extend alimony payments beyond the death of the person directed to pay."; and "The determination of whether the husband's death terminates his obligation to pay alimony to the divorced wife depends, first, upon whether the court has the power to provide in its decree that periodical payments for the support of the wife should continue despite the occurrence of such event. It would appear from the cases that generally such power is considered as not existent, in the absence of any statute or agreement between the parties."

In the divorce proceeding between the plaintiff and her husband M. S. Aldrich, the Circuit Court of Dade County, Florida, had jurisdiction of the subject matter of the controversy and of the parties and had the power to render a valid judgment dissolving the marriage between the parties, but, in the absence of any agreement between the parties, [fol. 80] and there was no such agreement, that court did not have jurisdiction to award alimony to extend beyond the death of the husband and to make such alimony a charge against his estate. For that reason the judgment awarding such alimony was void and of no force and effect under the law of the State of Florida in which such judgment was

rendered and will not be given full faith and credit in the courts of this state.

In *State ex rel. Vance* v. *Arthur*, 142 W. Va. 737, 98 S. E. 2d 418, this Court in its opinion quoted with approval this text from 11 Michie's Jurisprudence, Jurisdiction, Section 9: "If the court exceeds its jurisdiction over the subject matter, its decrees are nullities to that extent and may be impeached directly or collaterally by any persons, anywhere, at any time, or in any manner, and may be declared void by every court in which they are called in question. Want of jurisdiction affirmatively appearing on the face of the proceedings makes the judgment even of courts of general jurisdiction null, and they may be so treated by any court in any proceeding, direct or collateral."

A judgment may be valid in part and void in part. *State ex rel. Browning* v. *Tucker*, 142 W. Va. 830, 98 S. E. 2d 740; 30A Am. Jur., Judgments, Section 20. "If the judgment is in excess of that which the court rendering it had by law the power to pronounce, such judgment is void for the excess only." *Ex parte Mooney*, 26 W. Va. 36, 53 Am. Rep. 59; *Dye* v. *Skeen*, 135 W. Va. 90, 62 S. E. 2d 681, 24 A.L.R. 2d 1234. In *Flaxman* v. *Flaxman*, 169 Okla. 65, [fol. 81] 35 P. 2d 950, that court held that a decree granting a divorce and awarding alimony which the court was without power to award and enforce, was valid as to the divorce but void as to the alimony. See also *Oder* v. *Oder*, 149 Okla. 63, 299 P. 202. In *Ecton* v. *Tomlinson*, 278 Mo. 282, 212 S. W. 865, the court held that the jurisdiction of a court to award alimony being statutory, its judgment insofar as it awarded the wife specific personal property as alimony and extinguished her dower, was void. In the opinion that court said: "That the jurisdiction of courts in this state to hear and determine suits for divorce and alimony depends upon and is limited by the statutes is not now an open question. *Chapman* v. *Chapman*, 269 Mo. 663, 192 S. W. 448. Because of such limitations a court in an action for divorce cannot decree to a wife as a part or all of her alimony specific personal property of the husband. *Aylor* v. *Aylor*, 186 S. W. 1071. * * *. In an action for divorce where the court attempts to take into account, adjudicate and settle all questions of property rights, both present and

inchoate, between the parties, it is not in so doing merely erroneously exercising jurisdiction; it is proceeding wholly without jurisdiction. It follows, therefore, that its judgment in such respect is void. * * *. It is necessary that a court have jurisdiction, not only of the parties and the subject matter, but it must also have jurisdiction to render the particular judgment in the particular case. *State ex rel.* [fol. 82] *Muench*, 217 Mo. 124, 117 S. W. 25, 129 Am. St. Rep. 536; *Charles* v. *White*, 214 Mo. 187, 112 S. W. 545, 21 L.R.A. (N.S.) 481, 127 Am. St. Rep. 674." In *Edmondson* v. *Edmondson*, Mo. 1951, 242 S. W. 2d 730, the Kansas City Court of Appeals held that the court which granted a divorce and awarded alimony was without power to award installment payments to the wife for support and maintenance for the rest of her natural life regardless of marriage and to make them a charge upon the estate of the husband; that the portion of the judgment of divorce which purported to award alimony to the wife for the rest of her natural life was void; and that the validity of the remainder of the judgment dissolving the marriage was not affected.

Inasmuch as the judgment for alimony which has accrued since the death of M. S. Aldrich is not enforceable against his estate, the effect of the transfers of the property and assets formerly owned by him is not considered or discussed.

The judgment of the Circuit Court of Putnam County, being free from error, is affirmed.

Affirmed.

[fol. 83]

CALHOUN, President, dissenting:

I agree that the portion of the Florida decree which states that the alimony awarded shall "become a charge upon his estate during her lifetime" cannot have the effect of creating a "charge" in the sense of a lien, equitable or otherwise, upon the husband's real estate in this state. The decree was operative on the husband personally, but could not have the extra-territorial effect of creating a "charge" upon his real estate situated in West Virginia. *Wilson* v. *Braden*, 48 W. Va. 196, pt. 1 syl., 36 S. E. 367; *Woodcock* v. *Barrick and Yost*, 79 W. Va. 449, pt. 3 syl., 91 S. E. 396; *Tennant's*

Heirs v. *Fretts*, 67 W. Va. 569, 571, 68 S. E. 387, 388; 50 C.J.S., Judgments, Section 889, page 485.

To the extent, however, that the majority opinion undertakes to determine the mere incorrectness of the Florida court's judgment awarding alimony to be paid to the wife for her lifetime, I respectfully dissent.

Under Section 1, Article IV of the Constitution of the United States, a judgment of a court of another state must be accorded full faith and credit in the courts of this state. A judgment of a court of another state may be attacked in a court of this state only for fraud in its procurement or lack of jurisdiction in the court by which it was rendered. 50 C. J. S., Judgments, Section 889e, page 481. If there is any exception to the principles stated above, I have never [fol. 84] learned of it, though such fundamental principles have been adhered to and reaffirmed by this Court until this time in cases almost without number, some of the more recent ones being as follows: *Gavenda Brothers, Inc.* v. *Elkins Limestone Co.*, W. Va. , 116 S. E. 2d 910; *Gardner* v. *Gardner*, 144 W. Va. 630, 110 S. E. 2d 495; *Consumer Credit Co. of Waynesburg* v. *Bowers*, 143 W. Va. 748, 104 S. E. 2d 869; *Bennett* v. *Bennett*, 137 W. Va. 179, 70 S. E. 2d 894; *Paull* v. *Cook*, 135 W. Va. 833, 65 S. E. 2d 750; *Pukas* v. *Pukas*, 129 W. Va. 765, 42 S. E. 2d 11; *Perkins* v. *Hall*, 123 W. Va. 707, 17 S. E. 2d 795.

The only way a judgment or decree of a court in another state may be assailed in a court of this state is by showing that it is void. *Pukas* v. *Pukas*, 129 W. Va. 765, 770, 42 S. E. 2d 11, 13. "The only escape from obedience to the rule that a judgment of a sister state is entitled to full faith and credit lies in a holding that the judgment is void and entitled to no standing even in the state in which it was rendered." 30A Am. Jur., Judgments, Section 246, page 314. That is to say, it must appear that, because of a lack of jurisdiction of the person or of the subject matter, "the judgment or decree was void." *Adkins* v. *Adkins*, 142 W. Va. 646, pt. 3 syl., 97 S. E. 2d 789. "The judgment of a sister state must be given full faith and credit unless it is absolutely void." 30A Am. Jur., Judgments, Section 246, page 314.

Courts of this state "may not refuse to enforce a judgment of another state because it involves some contraven- [fol. 85] tion of the public policy of this state." *Paull* v. *Cook*, 135 W. Va. 833, pt. 5 syl., 65 S. E. 2d 750. "The judgment or decree of a court of a sister state, having jurisdiction of the parties and the subject matter of suit, is *res judicata* as to all matters determined thereby. The parties are estopped by such final judgment or decree from again litigating the same matters in a court of this state." *R. D. Johnson Milling Co.* v. *Read*, 76 W. Va. 557, pt. 13 syl., 85 S. E. 726. "A decree relating to alimony, support or maintenance, entered in a court of another state having jurisdiction of the parties and subject matter, is entitled to full faith and credit in the courts of this State." *Bennett* v. *Bennett*, 137 W. Va. 179, pt. 7 syl., 70 S. E. 2d 894. "The faith and credit given is not to be niggardly but generous, full." *Johnson* v. *Muelberger*, 340 U.S. 581, 95 L. Ed. 552, 71 S. Ct. 474.

The purpose and effect of the full faith and credit clause "are to extend the res judicata effect of a judgment from the state of its rendition to all other states." 50 C.J.S., Judgments, Section 888b, page 469; 30A Am. Jur., Judgments, Section 236, page 304.

"Thus, under the full faith and credit clause of the Constitution of the United States, a judgment rendered by a court of one state is, in the courts of another state of the Union, binding and conclusive as to the merits adjudicated. It is improper to permit an alteration, modification or reexamination of the judgment, or of the grounds on which it is based, or of the merits of the original cause of action. Thus, [fol. 86] jurisdiction to render the judgment having been established or being presumed, the full faith and credit clause precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles upon which the judgment is based. Whatever mistake of law may underlie a judgment, it is, under the full faith and credit clause, conclusive as to all the media concludendi." 30A Am. Jur., Judgments, Section 239, pages 307-08. See also *Stewart* v. *Northern Assurance Co.*, 45 W. Va. 734, pt. 1 syl., 32 S. E. 218, 44 L.R.A. 101; *Paull* v. *Cook*, 135 W. Va. 833, 841, 65 S. E. 2d 750, 755; *Dry* v. *Rice*, 147 Va. 331, 137 S. E. 473.

A judgment of a court of a sister state is binding and conclusive upon the courts of this state "not only as to the matters actually determined, but as to every other matter which the parties might have litigated as incident thereto, and coming within the legitimate purview of the subject-matter of the action. * * * An erroneous ruling of the court will not prevent the matter from being *res judicata*." *Sayre's Admr.* v. *Harrold*, 33 W. Va. 553, pt. 1 syl., 11 S. E. 16.

The decree or judgment of a Florida court must be accorded by the courts of this state the same binding effect on the parties thereto as in the state where rendered. If the matter is one which cannot be again litigated there, it cannot be reexamined, relitigated or modified by this or any other court of this state. *Stewart* v. *Stewart*, 27 W. Va. 167, [fol. 87] pt. 4 syl. "An adjudication which precludes relitigation of a question in the state in which it took place may be pleaded in bar in a subsequent suit in another state between the same parties and in which the same matter is involved and decisive of the issue." *Roller* v. *Murray*, 71 W. Va. 161, pt. 3 syl., 76 S. E. 172, L.R.A. 1915F 984, Ann. Cas. 1914B 1139, App. Dism., 234 U.S. 738, 58 L. Ed. 1570, 34 S. Ct. 902. The judgment of a sister state "must have the same faith and credit here, as it had in the state where it was rendered." *Gilchrist* v. *Oil and Oil Land Co.*, 21 W. Va. 115, pt. 1 syl. "It is well settled that the judgment of a sister state must be accorded in this state the same faith and credit which it has in the state where rendered." *Crumlish's Admr.* v. *Central Improvement Co.*, 38 W. Va. 390, pt. 5 syl., 18 S. E. 456, 23 L.R.A. 120, 45 Am. St. Rep. 872; *Wells-Stone Mercantile Co.* v. *Truax*, 44 W. Va. 531, pt. 1 syl., 29 S. E. 1006; 50 C.J.S., Judgments, Section 889b, page 473.

A judgment of a sister state may not be challenged on the ground "that the basis of the action was tainted with fraud. That matter is foreclosed by the judgment." Only fraud "in the procurement" of the judgment may be considered. *International Harvester Co.* v. *Solaze*, 116 W. Va. 34, pts. 4 and 5 syl., 178 S. E. 429.

If the court which rendered the foreign judgment is a court of general jurisdiction "the presumption is, it had

jurisdiction of the particular case, and, to render the decree void, this presumption must be overcome by proof." [fol. 88] *Stewart* v. *Stewart*, 27 W. Va. 167, pt. 6 syl. There is no such presumption in relation to judgments of inferior courts, such as justices of the peace, but such judgments are, nevertheless, entitled to full faith and credit in courts of all other states. 50 C.J.S., Judgments, Section 896, page 513.

Respectable authority appears to support the proposition that the full faith and credit clause will forbid one to question the jurisdiction of the court to render a judgment in a case in which he appeared and participated as a litigant. *Davis* v. *Davis*, 305 U.S. 32, 83 L. Ed. 26, 59 S. Ct. 3; *Morrissey* v. *Morrissey*, 1 N.J. 448, 64 A. 2d 209, 12 A.L.R. 2d 378.

The legal question presented herein must not be confused with our statutory provision that the writ of prohibition shall lie when the inferior court lacks jurisdiction of the subject matter in controversy, "or, having such jurisdiction, exceeds its legitimate powers." Code, 53-1-1. My research fails to disclose any authority for the proposition that this court may refuse to give full faith and credit to the Florida judgment merely on the ground that that court, having jurisdiction, exceeded its legitimate powers. I believe all legal authorities leave the proposition unquestionable that it is not enough to show that the Florida judgment is merely erroneous or voidable. It must appear to be absolutely void, a nullity.

I believe also that the proposition is beyond question [fol. 89] that, if the Florida court had jurisdiction of the person and of the subject matter, including jurisdiction to award alimony, its judgment cannot be assailed by this Court by reason of anything the Florida court did, however erroneous and without legal authorization, in the exercise of that jurisdiction. I find in this case no basis whatsoever for asserting that the Florida court lacked jurisdiction of either the person or of the subject matter. The contrary appears beyond question. That being true, the judgment of that court cannot be questioned in the absence of a showing that the judgment was procured by fraud, and there is no contention of that nature.

We must be careful not to confuse jurisdiction with an improper or erroneous exercise of jurisdiction. The Florida court had jurisdiction of the subject matter and the parties, including jurisdiction to determine and fix alimony. Jurisdiction to decide all matters pertaining to alimony included jurisdiction to decree rightly as well as wrongly, correctly as well as incorrectly, lawfully as well as unlawfully. "The test of a court's jurisdiction is whether or not it had power to enter on the inquiry, not whether its conclusion in the course thereof was correct, for the power to decide necessarily carries with it the power to decide wrongly as well as rightly." 21 C.J.S., Courts, Section 27, pages 38-39; *St. Lawrence Co.* v. *Bolt and Mathews*, 51 W. Va. 352, 41 S. E. 351; *Stewart* v. *Tennant*, 52 W. Va. 559, pt. 8 syl., 44 S. E. 223; *Adkins* v. *Adkins*, 142 W. Va. 646, 97 S. E. 2d 789; 11 M.J., Jurisdiction, Section 10, page 436.

[fol. 90] "Where a court has lawfully acquired jurisdiction of the parties and the subject matter of the litigation, subsequent departure by the court from the rules of law or procedure in the exercise of that jurisdiction is not jurisdictional error." *Blankenship* v. *Mongini*, 105 W. Va. 530, pt. 2 syl., 143 S. E. 301.

I believe that the legal principles referred to herein establish the fact that the majority opinion, without warrant in law or precedent and contrary to basic legal and constitutional principles, arrogates to this court the right to sit as a reviewing or appellate court in appraising and reexamining the mere correctness of the final judgment of a court of general jurisdiction in a sister state. The correctness of that judgment could not be collaterally challenged even in the State of Florida or in any other manner by any court, except by legally authorized appellate procedure, in the absence of a showing of fraud in the procurement of the judgment or lack of jurisdiction of the Florida court to pronounce it.

The decree pronounced by the Florida court is not contrary to the public policy of this state. I am not prepared to concede that the decree is erroneous either under the Florida law or the law of West Virginia. *Hale* v. *Hale*, 108 W. Va. 337, pt. 2 syl., 150 S. E. 748. If it is erroneous,

voidable, or in part unauthorized by law, that is a matter which an appropriate appellate court in Florida may determine; but this Court may not. But even if the decree were [fol. 91] contrary to the public policy of West Virginia, this Court, in accordance with authorities previously cited herein, would be required to accord such decretal judgment full faith and credit.

It is not correct to say, as does the majority opinion, that "jurisdiction" to grant alimony or support to a wife is dependent solely on divorce statutes. It is true that jurisdiction to grant a divorce is wholly a creature of statute and did not exist at common law. *State ex rel. Hammond* v. *Morrell*, 144 W. Va. 83, 106 S. E. 2d 521. The validity of the Florida divorce, however, is not in question. But on the contrary, courts of equity independently of statutes pertaining to alimony, separate maintenance or otherwise, have jurisdiction to entertain suits for alimony, separate maintenance, or to compel a husband to support his wife. Alimony is not a mere creature of statute. *Lieberman* v. *Lieberman*, 142 W. Va. 716, 724, 98 S. E. 2d 275, 281; *Snyder* v. *Lane*, 141 W. Va. 195, 89 S. E. 2d 607; *Davis* v. *Davis*, 137 W. Va. 213, 70 S. E. 2d 889; *Wolford* v. *Wolford*, 133 W. Va. 403, 56 S. E. 2d 614; *Dailey* v. *Brennan*, 123 W. Va. 261, 14 S. E. 2d 617. "A court of equity, independently of proceedings for divorce, on the ground of inadequate remedy at law, may decree maintenance to a wife who has been deserted by her husband." *Lang* v. *Lang*, 70 W. Va. 205, pt. 1 syl., 73 S. E. 716, 38 L.R.A. (N.S.) 950, which case was decided prior to the enactment of our statutes providing for suits for separate maintenance. "Alimony is not merely an incident of divorce; it is a substantive right, which may be decreed to any wife under a [fol. 92] given state of facts. This inherited power of equity courts, independent of any statutes, still exists and may be enforced in a suit brought for that purpose alone." *White* v. *White*, 181 Va. 162, 168, 24 S. E. 2d 448, 451. See also *Dray* v. *Landcraren*, 161 Va. 699, 172 S. E. 252; *Heflin* v. *Heflin*, 177 Va. 385, 14 S. E. 2d 317, 141 A.L.R. 391; *Wilson* v. *Wilson*, 178 Va. 427, 17 S. E. 2d 397. "According to the weight of authority, a court of equity has inherent jurisdiction, independent of any action for divorce and irrespec-

tive of any statute, to entertain a suit by a wife for alimony or separate maintenance; * * * ." 42 C.J.S., Husband and Wife, Section 614b, page 213.

The majority opinion undertakes to place its own construction not only on Florida statutes, but also upon the Florida trial court's and the Florida appellate court's construction of such statutes. The majority opinion omits to refer to the case of *Hale* v. *Hale*, 108 W. Va. 337, 150 S. E. 748, which was cited in counsel's brief and relied upon in oral argument. In that case, this Court decided that, by a proper construction of the divorce statutes of this state, a trial court may provide for alimony during the entire life of the wife, "to be paid to her through her life, that is, to be paid by the husband while living and out of his estate after his death, * * * ." Is it the position of the majority opinion that a Florida court may reexamine a decree of that nature entered by a West Virginia trial court, and declare it void merely because the Florida court disagrees with the construction placed on decisions of this Court or West Virginia statutes by a trial court of this state?

[fol. 93] The majority opinion cites various authorities from other jurisdictions involving legal principles similar to those presented in the case of *State ex rel. Hammond* v. *Worrell*, 144 W. Va. 83, 106 S. E. 2d 521. In that case the Court held that since suits for divorce exist only by virtue of statute, a court in such a suit may adjudicate only in relation to such matters as are authorized by statute; that such statutes of this state do not provide for jurisdiction to partition real estate in a divorce suit; and that a decree in a divorce suit which undertakes to partition real estate is void for lack of jurisdiction. But courts of Florida are given statutory authority or *jurisdiction in divorce suits to make adjudications pertaining to alimony.* Therefore, decisions of the type referred to are wholly lacking in pertinency. Here I repeat that which is so fundamental in law, including numerous prior decisions of this Court; that is, jurisdiction to adjudicate in relation to alimony or any other subject includes jurisdiction to decide or adjudicate rightly as well as wrongfully, correctly as well as incor-

rectly, lawfully as well as unlawfully. That is why appellate courts are established.

In my judgment, the majority opinion embodies a labored effort to justify a legally untenable proposition and represents a serious deviation from sound, well settled constitutional principles. I, therefore, respectfully dissent.

[fol. 94]

IN SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

12139

[Title omitted]

MINUTE ENTRY OF FILING OF PETITION FOR REHEARING AND SUSPENSION OF MANDATE—September 5, 1962

Petition for rehearing and reargument having been filed in the above styled action on the 6th day of August, 1962, it is ordered by the Court that the mandate heretofore entered herein be, and it is hereby suspended until the further order of the Court.

IN SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

12139

[Title omitted]

MINUTE ENTRY OF DENIAL OF REHEARING—October 22, 1962

The petition for rehearing and reargument filed in this action having been maturely considered, a majority of the Court is of opinion to, and doth hereby deny the prayer of the petition and doth order that the final order entered herein be made absolute and certified as heretofore directed. Judge Calhoun would grant.

[fol. 94a] [File endorsement omitted]

[fol. 95]

No. 12139

IN SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA

CHARLESTON

MARGUERITE LORETTA ALDRICH

vs.

WILLIAM T. ALDRICH, ET AL.

PETITION OF MARGUERITE LORETTA ALDRICH, APPELLANT, PLAINTIFF BELOW, FOR A REHEARING—Filed August 6, 1962

To the Honorable Judges of the Supreme Court of Appeals of West Virginia:

The undersigned petitioner, Marguerite Loretta Aldrich, respectfully represents that she is aggrieved by the judgment of the majority of this Honorable Court entered on July 6, 1962, by which the judgment of the Circuit Court of Putnam County was affirmed.

Proposition for Consideration

The proposition before this Honorable Court was whether a final judgment of the Circuit Court of Dade County, [fol. 96] Florida, would be given full faith and credit in Putnam County, West Virginia, and enforced as provided by Article IV, Section I, of the Constitution of the United States.

Judgment of This Court

The majority opinion of this Court held that the judgment was not enforceable in West Virginia because the Florida Court erred in making the finding and ruling set out therein.

This case is the aftermath of a divorce suit which was tried in the Circuit Court of Dade County, Florida, in which Marguerite Loretta Aldrich was plaintiff and the late M. S. Aldrich was defendant. Both parties appeared and submitted themselves to the jurisdiction of the court and it is admitted that the court had jurisdiction of the subject matter. A divorce was awarded to the plaintiff, appellant, and the defendant, the late M. S. Aldrich, was ordered to pay alimony to her in the amount of $250.00 per month so long as she lived and the decree specifically made the same a charge against his estate upon his death. The alimony was subsequently reduced to $215.00 per month but the decree otherwise was unchanged.

This order of the Circuit Court of Dade County, Florida, was entered on June 1, 1945, and was not appealed from.

M. S. Aldrich complied with the order of the court until his death, which occurred May 29, 1958. This action was brought to enforce the claim of the plaintiff against his assets in West Virginia, for alimony which accrued to her after his death. The Circuit Court of Putnam County dismissed the action and the majority of this Court affirmed.

[fol. 97] Grounds for Rehearing

1. The majority opinion does not give full faith and credit to the decree of the Florida Court as required by Article IV, Section 1, of the Constitution of the United States.

2. The majority opinion misinterprets the holding of the Florida Court in *Johnson* vs. *Every*, 1957, 93, So. 2d 390.

3. The majority opinion leaves every final order of trial courts open to review and repudiation years after the time for appeal has passed.

* * * * * * *

[fol. 103] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 104]

SUPREME COURT OF THE UNITED STATES

No. 737—October Term, 1962

MARGUERITE LORETTA ALDRICH, Petitioner,

vs.

WILLIAM T. ALDRICH, et al.

ORDER ALLOWING CERTIORARI—April 15, 1963

The petition herein for a writ of certiorari to the Supreme Court of Appeals of the State of West Virginia is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.